

IN THE SUPREME COURT OF THE STATE OF VERMONT  
DOCKET NO. 2019-266

State of Vermont

v.

Max Misch

APPEAL FROM SUPERIOR COURT, CRIMINAL DIVISION (BENNINGTON)  
Docket No. 172-2-19 Bncr

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**Brief for Appellant State of Vermont**

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## **ISSUES PRESENTED**

1. Does 13 V.S.A. § 4021 violate Chapter I, Article 16 of the Vermont Constitution?
2. Does 13 V.S.A. § 4021 violate Chapter I, Article 7 of the Vermont Constitution?

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## INTRODUCTION

The people of Vermont, through their elected representatives, have decided that limiting the capacity of ammunition magazines can save lives by reducing the likelihood and harm of a mass shooting. In April 2018, the Governor signed into law S.55, a bill that among other things bans possessing, selling, or importing into the State long-gun magazines that can hold more than 10 rounds of ammunition and handgun magazines that can hold more than 15 rounds of ammunition. Vermont's law is by no means novel. Large-capacity magazines were banned nationwide from 1994 to 2004 and are currently illegal in 9 States and the District of Columbia.

Defendant was charged with two counts of violating the magazine law, codified at 13 V.S.A. § 4021, after he drove to New Hampshire, purchased two 30-round magazines for his AR-15 style rifle, and returned with those magazines to his home in Vermont. Defendant moved to dismiss the charges on the theory that § 4021 violates Article 16 (the right to bear arms) and Article 7 (the Common Benefits Clause) of the Vermont Constitution. Defendant has not argued the law violates the United States Constitution.

The trial court rejected defendants' arguments and denied his motion. Because the issues involved are important, the parties jointly moved the trial court to certify the constitutional questions to this Court for interlocutory appellate review. This Court should now uphold § 4021.

Article 16 can and should be interpreted to both protect an individual right to use a firearm for self-defense and permit reasonable gun safety legislation like 13



V.S.A. § 4021. The Court should apply a well-established “reasonable regulation” test to Article 16 challenges, under which gun safety legislation is upheld so long as the burden on the right to use a firearm in self-defense is reasonable in light of the balance of interests at stake—specifically the State’s duty to protect the public from the danger of gun violence. This common-sense test is applied by other New England states when interpreting their own right-to-bear arms provisions and is consistent with Article 16’s text and Vermont’s historical and constitutional traditions.

Applying that test here, defendant’s Article 16 challenge should be rejected. *First*, the State’s compelling interest in reducing the likelihood and harm of a mass shooting in Vermont can hardly be disputed. *Second*, Section 4021 furthers that interest. If a mass shooter can fire more rounds without having to reload, more people will be shot and killed. Recent history tragically confirms this. To take just one example, last August an Ohio man armed with an AR-15 style rifle and a 100-round magazine opened fire on a public street and shot 36 people—killing 9—in less than a minute before being stopped by police.<sup>1</sup> And *finally*, § 4021 does not impose a significant burden on the Article 16 right to use a firearm in self-defense. The law restricts permissible magazine capacity. It does not prevent law-abiding Vermonters from obtaining firearms and ammunition for self-defense.

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<sup>1</sup> Alejandro De La Garza & Michael Zennie, *Dayton Shooting Lasted Just 32 Seconds and Left 9 Dead*, TIME (Aug. 9, 2019), <https://time.com/5643405/what-to-know-shooting-dayton-ohio/>.

Defendant's Common Benefits challenge to § 4021's grandfather clause also fails. Even if the challenge was viable without an underlying Article 16 violation (and it is not), a grandfather clause is a permissible and well-established legislative tool for mitigating the potential inconvenience of a new regulation.

## STATEMENT OF THE CASE

### **A. The Legislature enacted S.55 in response to continued mass shootings in the United States and a threatened school shooting in Fair Haven, Vermont.**

Mass shootings are a horrifying fact of life in this country. Columbine, Virginia Tech, Fort Hood, Tucson, Aurora, Sandy Hook, Charleston, San Bernardino, Orlando, Sutherland Springs, Las Vegas, Parkland, Pittsburgh, Thousand Oaks, Virginia Beach, Gilroy, El Paso, Dayton, Odessa—the list goes on. In the 18 months alone since Vermont's magazine law was enacted, there have been more than 40 incidents where a shooter killed at least four people.<sup>2</sup>

On February 15, 2018, the day after 17 people were murdered in a high school by a mass shooter in Parkland, Florida, the Vermont State Police arrested a Vermont teenager based on evidence he intended to commit a mass shooting at Fair Haven Union High School. *See State v. Sawyer*, 2018 VT 43, ¶¶ 5-10 (discussing the facts of the Fair Haven case). The teenager told police he had been planning to acquire the needed guns and ammunition and commit the shooting within several weeks, “that

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<sup>2</sup> Sortable annual reports tracking shootings are available at <https://www.gunviolencearchive.org>.

he wanted to exceed the body count from the Virginia Tech shooting”—in which 33 people were killed—“and that he had chosen his ammunition accordingly.” *Id.*, ¶ 7.<sup>3</sup>

The next day Governor Phil Scott announced his willingness to consider new gun safety legislation, despite his previous opposition.<sup>4</sup> In a press conference announcing the reversal, the Governor explained: “In the aftermath of Florida, this situation in Fair Haven has jolted me, especially after reading the [police] affidavit and realizing that only by the grace of God . . . did we avert a horrific outcome.”<sup>5</sup> We “have an obligation to protect our citizens.”<sup>6</sup> The Legislature promptly went to work on several gun safety bills, including S.55.

As the Legislature debated S.55, it considered testimony from dozens of witnesses, both for and against the legislation, and an extensive documentary record.<sup>7</sup> This record included school board resolutions explaining that “Vermont school children” now spend more time “in lock-down and active shooter drills” than on “fire drills,” which understandably invokes “significant anxiety and fear.” Letter

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<sup>3</sup> Christine Hauser & Anahad O’Connor, *Virginia Tech Shooting Leaves 33 Dead*, N.Y. Times (Apr. 16, 2007), available at <https://www.nytimes.com/2007/04/16/us/16cnd-shooting.html>.

<sup>4</sup> John Walters, *Scott Shifts Gun Stance Following Fair Haven Threat*, Seven Days (Feb. 16, 2018), available at <https://www.sevendaysvt.com/OffMessage/archives/2018/02/16/walters-scott-shifts-gun-stance-following-fair-haven-threat>.

<sup>5</sup> VPR News, *Jolted Part 4: The Reversal (Transcript)*, Vt. Public Radio, <https://www.vpr.org/post/jolted-part-4-reversal-transcript#stream/0>.

<sup>6</sup> Walters, *supra* note 3.

<sup>7</sup> See generally S.55 (Act 94), Bill Status, <https://legislature.vermont.gov/bill/status/2018/S.55>. Unless otherwise noted, the legislative documents cited in this section were submitted to the House Judiciary Committee and are available at <https://legislature.vermont.gov/committee/document/2018/18/Bill/85082>.

from Addison Cent. Sch. Bd. to Gov. Phil Scott (Feb. 18, 2018); Letter from Essex-Westford Sch. Bd. to Gov. Phil Scott (Mar. 8, 2018). In a similar vein, one constituent expressed dismay about how “every single morning” when he sends his young children off to school, he thinks to himself “that may be the last time I ever see them alive.” E-mail from Gregory Nagourney to Rep. Maxine Grad (Feb. 16, 2018). The constituent questioned whether many parents in other developed countries were “having similar thoughts.” *Id.*

The legislative record also included evidence specifically explaining the danger inherent in large-capacity magazines, the purpose of which is to allow a shooter to fire more rounds (and thus potentially kill or injure more people) without having to reload. As one witness before the House Judiciary Committee noted, “the same split second that it takes to swap magazines could be used by innocent victims to escape a mass shooting and also could be used to attempt to disarm the shooter.” E-mail from David Cahill, Windsor County State’s Attorney, to Rep. Maxine Grad (Mar. 19, 2018); *see also id.* (“It is my professional opinion that a 10 round magazine limit fairly balances . . . competing rights and, if enforced, would offer victims and first responders a brief window to act during a mass shooting incident.”); E-mail from Bob Williamson to Rep. Maxine Grad (Mar. 15, 2018) (“Two testifiers today claim the 10-round ammo magazine was an arbitrary limit. I wish I could bring Christina Taylor-Green to testify, to tell you why it isn’t arbitrary, but I can’t: Christina is the 9-year-old child killed by Jared Loughner’s 13th bullet, according to FBI Reports, in Tucson, Jan. 8, 2011, the day Rep. Gabby Giffords was shot.”); E-mail from Peter

Geiss to H. Judiciary Comm. (March 16, 2018) (“[A] ban on high capacity magazines which only exist to make highly lethal assault weapons even more lethal” would be a “significant step” toward “reducing gun violence” and “saving innocent lives.”).

One Vermont teacher wrote that a large-capacity magazine ban would keep her “safer as a citizen” and her “children safer when they are at school, at the movies, in church, and at concerts.” E-mail from Emily Grimes (Mar. 23, 2018). She explained that “[t]he ease with which devastating action can be taken with a firearm requires that we have laws that promote responsible gun ownership and policies and practices that prioritize the safety and well-being of citizens.” *Id.* A safety officer for a childcare campus with 80 children and 34 staff on site explained that she “can picture clearly the difference” that a ban on high-capacity magazine “would make to who lives and how many die” if a mass shooting occurred at her workplace. E-mail from Grace Winslow (Mar. 2018). She explained “that if someone reached our front door with a semi-automatic assault weapon and multiple high-capacity clips, that person could kill 3 office staff and everyone in two classrooms in under 7 minutes before the rest of the building was able to react effectively: 34 children and 9 adults.” *Id.* Another constituent wrote that “[t]he potential to save even one life in exchange for an enthusiast having to reload more frequently at the gun range is, I believe, I trade-off well worth it.” E-mail to Rep. Harvey Smith (Mar. 26, 2018).

Another document in the legislative record was an essay by a doctor who treated Parkland victims. E-mail from John Devino to Rep. Maxine Grad (Mar. 13, 2018). The doctor explained the devastating trauma caused by bullets fired from an AR-15

assault rifle, the use of which “is the common denominator in many mass shootings.” *Id.* The bullets travel at a higher speed, displacing tissue several inches on either side of the bullet’s path, causing catastrophic bleeding, and leaving exit wounds “the size of an orange.” *Id.* Whereas handgun injuries to the liver are generally survivable, for example, a similar wound from an AR-15 bullet “would cause so much bleeding that the patient would likely never make it to a trauma center to receive [] care.” *Id.* The essay observed that an AR-15 outfitted with a large-capacity magazine “allows many more lethal bullets to be delivered quickly without reloading.” *Id.*

Many other documents in the record expressly reference the events in Fair Haven. *See, e.g.,* H. Judiciary Comm., S.55, Documents & Handouts, Copies Emails Supporting S.55 (Mar. 23, 2018).

The Legislature also considered recent federal court decisions upholding large-capacity magazine bans against federal constitutional challenges, including *New York State Rifle & Pistol Association v. Cuomo*, 804 F.3d 242 (2d Cir. 2015), which upheld New York’s and Connecticut’s magazine limits, and *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017) (en banc), which upheld Maryland’s magazine limits. *See* H. Judiciary Comm., S.55, Documents & Handouts (Mar. 20, 2018). The Second Circuit held that banning large-capacity magazines was substantially related to New York’s and Connecticut’s compelling interest in controlling crime. *N.Y.S. Rifle*, 804 F.3d at 263-64 (finding support for states’ position that large-capacity magazines are particularly dangerous, “are disproportionately used in mass

shootings, like the one in Newtown, in which the shooter used multiple large-capacity magazines to fire 154 rounds in less than five minutes,” and “result in more shots fired, persons wounded, and wounds per victim than do other gun attacks”). Likewise, the Fourth Circuit held that Maryland’s legislature acted reasonably by banning large-capacity magazines in order to reduce their availability “so that when a criminal acts, he does so with a less dangerous weapon and less severe consequences.” *Kolbe*, 849 F.3d at 140. The court found this was “precisely the type of judgment that legislatures are allowed to make without second-guessing by a court.” *Id.*

Governor Scott echoed the public safety concerns evident in the legislative record in his official signing statement for S.55. Governor Phil Scott, Official Statement on S.55, S.221 & H.422 (Mar. 30, 2018).<sup>8</sup> The Governor explained that although “Vermont is currently one of the healthiest and safest states in America,” recent “tragedies in Florida, Las Vegas, Newtown and elsewhere—as well as the averted plot to shoot up Fair Haven High School—have demonstrated [that] no state is immune to the risk of extreme violence.” *Id.* The statement continues, “As Governor, I have a moral and legal obligation and responsibility to provide for the safety of our citizens. If we are at a point when our kids are afraid to go to school and parents are afraid to put their kids on a bus, who are we?” *Id.* The Governor reiterated his strong support for the people’s constitutional rights, including the right to bear

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<sup>8</sup> Available at <http://governor.vermont.gov/press-release/official-statement-s55-s221-h422>.

arms, and stated his belief that the new laws “uphold these rights, while taking reasonable steps to reduce the risk of violence.” *Id.*

**B. Section 4021 restricts the ability to acquire and possess large-capacity magazines.**

As enacted, Vermont’s magazine law provides that a “person shall not manufacture, possess, transfer, offer for sale, purchase, or receive or import into this State a large capacity ammunition feeding device.” 13 V.S.A. § 4021(a). These devices are defined to include long gun magazines holding more than 10 rounds of ammunition and hand gun magazines holding more than 15 rounds. 13 V.S.A. § 4021(e)(1). S.55 grandfathers devices lawfully possessed before April 11, 2018, and allowed licensed dealers until October 1, 2018, to sell off their existing stock. 13 V.S.A. § 4021(c)(1)-(2).

**C. Facts and Procedural History**

Unless otherwise noted, the facts below are summarized from the charging affidavit of Vermont State Police Detective Patrick Slaney. PC 1, 11-14.

In October 2018, defendant Max Misch’s ex-wife Lisa Shapiro disclosed to her therapist that she had concerns about defendant, “which involved Misch’s purchasing weapons, large capacity magazines, and stockpiling ammunition.” PC 11. “This, coupled with Shapiro’s knowledge of white supremacist and neo-Nazi affiliations of Misch, prompted the therapist to report the information to law enforcement.” *Id.*; see 18 V.S.A. § 1882 (describing mental health professionals’ duty to disclose protected health information to avert a serious risk of danger).



In January 2019, Detective Slaney interviewed Ms. Shapiro. PC 11. During that interview, Ms. Shapiro revealed that defendant had recently purchased an assault rifle in Vermont, and that in December 2018, she had driven defendant to a Runnings department store in Hillsdale, New Hampshire, so that he could purchase multiple 30-round magazines. PC 11-12. Ms. Shapiro reiterated her concerns about defendant. She noted he “has a predatory nature and tries to intimidate people,” “identifies as a White supremacist and neo-Nazi,” is “intelligent” but “has no loyalty and is arrogant,” previously “snapp[ed]” and strangled her,” and that his concerning behavior was “escalating” and now includes acquiring multiple firearms and large-capacity magazines. PC 11.<sup>9</sup>

On January 31, 2019, Detective Slaney traveled to the Runnings store. PC 12. A store employee provided Slaney with a receipt and surveillance footage from December 1, 2018, establishing that defendant visited the store with Ms. Shapiro, purchased two 30-round ammunition magazines, and left the store with the

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<sup>9</sup> Ms. Shapiro reported that defendant acquired an “AK-15” style rifle from the Bennington Armory. PC 11. An AK-15 is an assault rifle made by Kalashnikov for the Russian military. It is a modernized version of Kalashnikov’s “AK-47” rifle. Kyle Mizokami, *The Russian Military Is Getting New Assault Rifles*, Popular Mechanics (May 3, 2018), available at <https://www.popularmechanics.com/military/weapons/a20138224/russian-military-new-assault-rifles-ak-12-ak-15/>. Detective Slaney’s investigation revealed that in late September 2018, defendant purchased a Ruger 9mm pistol and two AK-47 30-round magazines from the Bennington Trading Post, and that in October 2018, defendant purchased an Anderson AM-15 rifle from the Bennington Armory. PC 12. An Anderson AM-15 is an “AR-15” style rifle, which is “the semiautomatic version of the M16 rifle used by [the U.S.] military.” *Kolbe*, 849 F.3d at 124; see Evan Brune, *10 Affordable AR-15s Found under \$500*, [www.shootingillustrated.com](http://www.shootingillustrated.com) (Aug. 15, 2018). The magazines defendant purchased in New Hampshire were compatible with the AM-15 rifle. PC 13. It is unclear from the record whether defendant actually purchased an AK-style weapon or what became of the AK-47 magazines he purchased in September 2018. In any event, those purchases did not give rise to any criminal charges.

magazines. PC 12-13. In a follow-up interview, Ms. Shapiro stated that after leaving the Runnings store, she drove defendant directly to his residence in Bennington where she dropped him off with the items he had purchased. *Id.*

On February 6, 2018, police executed a search at defendant's residence and located two 30-round magazines, consistent with what had been purchased at the Runnings store in New Hampshire. PC 13. Defendant was subsequently charged with two counts of possessing a large-capacity ammunition feeding device in violation of 13 V.S.A. § 4021(b). PC 1.

Defendant moved to dismiss the charges on the theory that 13 V.S.A. § 4021 violates the right to bear arms under Chapter I, Article 16, of the Vermont Constitution, and impermissibly discriminates against people who want to purchase large-capacity magazines after October 1, 2008, in violation of the Common Benefits Clause of Chapter I, Article 7, of the Vermont Constitution.

The trial court rejected both arguments in a decision filed June 28, 2018, and then granted the parties' joint motion for an appeal on report under V.R.A.P. 5(a), PC 10. This Court accepted the interlocutory appeal.

### **SUMMARY OF ARGUMENT**

The trial court correctly rejected defendant's arguments that 13 V.S.A. § 4021 violates the Vermont Constitution.

*First*, § 4021 does not violate Article 16. Limiting magazine capacity to ten rounds does not significantly burden the right to use a firearm in self-defense. And even if it did, that burden is justified by the State's interest in protecting public

safety by reducing the likelihood and harm of a mass shooting in Vermont. The Court should apply a “reasonable regulation” standard to Article 16 challenges, but regardless of the standard applied, § 4021 should be upheld. *See below* Argument, Section I.

*Second*, defendant’s Common Benefits challenge to § 4021’s grandfather provision should also be rejected. It is well-settled that the Legislature may use a grandfather provision to mitigate the potential burden of a new regulation. *See below* Argument, Section II.

## STANDARD OF REVIEW

The questions certified for appellate review involve only the facial constitutionality of 13 V.S.A. § 4021 under Article 16 and the Common Benefits Clause. “The facial constitutionality of a statute presents a pure question of law” that this Court reviews *de novo*. *State v. VanBuren*, 2018 VT 95, ¶ 19.

## ARGUMENT

Because “statutes are presumed to be constitutional and . . . reasonable,” courts “must accord deference to the policy choices made by the Legislature.” *Badgley v. Walton*, 2010 VT 68, ¶¶ 20, 38, 188 Vt. 367, 10 A.3d 469. Under the Vermont Constitution, the Legislature is authorized “to pass measures for the general welfare of the people” and is “itself the judge of the necessity or expediency of the means adopted.” *State v. Curley-Egan*, 2006 VT 95, ¶ 11, 180 Vt. 305, 910 A.2d 200 (quotation omitted). Accordingly, “the proponent of a constitutional challenge has a very weighty burden to overcome.” *Badgley*, 2010 VT 68, ¶ 20. This burden is

heightened where a party argues that a state constitutional provision restricts the Legislature more than an analogous provision of the federal constitution. *State v. Porter*, 164 Vt. 515, 518, 671 A.2d 1280, 1282 (1996). Defendant cannot meet this burden.

## **I. The magazine law does not violate Article 16.**

### **A. Article 16 creates a limited right to bear arms in self-defense that is subject to reasonable public safety regulation.**

Although this Court has not considered Article 16's meaning in depth, it has instructed that the state constitution should be interpreted by consulting the constitutional text, historical sources, relevant caselaw from both within and outside Vermont, and policy considerations. *See, e.g., State v. Rheaume*, 2004 VT 35, ¶ 16, 176 Vt. 413, 853 A.2d 1259 (citing *State v. Jewett*, 146 Vt. 221, 225-27, 500 A.2d 233, 236-37 (1985)). These factors demonstrate that Article 16 protects a limited individual right to bear arms in self-defense that is not violated by reasonable restrictions like 13 V.S.A. § 4021's ban on large-capacity magazines.

#### **1. Constitutional Text**

Article 16 provides “[t]hat the people have a right to bear arms for the defense of themselves and the State.” Vt. Const., ch. I, art. 16.<sup>10</sup> “[T]he language of the constitutional provision does not suggest that the right to bear arms is unlimited and undefinable.” *State v. Duranleau*, 128 Vt. 206, 210, 260 A.2d 383, 386 (1969).

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<sup>10</sup> The rest of the provision states that “as standing armies in time of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to and governed by the civil power.”

Rather, it suggests the right exists for two purposes: self-defense (“defence of themselves”) and militia service (“defence . . . of the State”).

Nor does Article 16 guarantee the freedom to possess or use *any* type of weapon. The framers knew how to enshrine such freedom of choice. *Compare* Vt. Const. ch. I, art. 3 (protecting the people’s “natural and unalienable right, to worship Almighty God, according to the dictates of their own consciences and understandings”); ch. I, art. 13 (protecting the people’s “right to freedom of speech, and of writing and publishing their sentiments”); ch. I, art. 14 (protecting “[t]he freedom of deliberation, speech, and debate, in the Legislature”). Any suggestion that Article 16 grants individuals absolute freedom to choose what arms could be used “for defence of themselves and the State,” Vt. Const. ch. I, art. 16, also cannot be squared with the constitution’s militia provision, which tasks the Legislature with enacting “regulations” and “restrictions” to govern how “[t]he inhabitants of this State shall be trained and armed for its defense,” Vt. Const. ch. II, § 59.

Moreover, the Article 16 right must be read in context with the Constitution’s grant of police and legislative powers to the General Assembly. “[T]he people of this state by their legal representatives, have the sole, inherent, and exclusive right of governing and regulating the internal police of the same.” Vt. Const. ch. I, art. 5. “This provision expresses a ‘general distribution of powers to the Legislature, authorizing the Legislature to pass measures for the general welfare of the people and making the Legislature itself the judge of the necessity or expediency of the means adopted.’” PC 4 (quoting *Curley-Egan*, 2006 VT 95, ¶ 11). Chapter II of the

Vermont Constitution likewise vests the “Supreme Legislative power” in the General Assembly, whose members are sworn to act as “guardian of the people” according to “the best of [their] judgment and ability,” Vt. Const. ch. II, §§ 2, 16, 17.

## 2. Historical sources<sup>11</sup>

Consideration of historical sources also supports interpreting Article 16 to permit reasonable regulations like 13 V.S.A. § 4021.

The text of Article 16 was originally adopted in 1777. *See* Vt. Const. ch. I, art. XV (1777). “Unfortunately, no record exists of any discussion or debate over the adoption of the Vermont Constitution.” *Shields v. Gerhart*, 163 Vt. 219, 225, 658 A.2d 924, 929 (1995). However, because Article 16 was copied verbatim from the Pennsylvania Constitution, it is possible to look to Pennsylvania to gain insight into the Article’s scope. *See Morris*, 165 Vt. 111, 127, 680 A.2d 90, 101-02 (1996) (noting that provisions that were “copied practically verbatim from other jurisdictions,” could be analyzed in part by looking to the historical record from other jurisdictions); Vt. Const. ch. I, art. XV (1777); Pa. Dec. of Rights art. XIII (1776).

Pennsylvania has long interpreted its constitutional right-to-bear arms provision as permitting reasonable firearms regulations. When the provision was first enacted in 1776, a special license was required to “fire any gun or other fire arms . . . within the city of Philadelphia.” Act of Aug. 26, 1721, *reprinted in* An Abridgment of the Laws of Pennsylvania, 1700–1811 at 173 (Philadelphia 1811). Later, in 1779, Pennsylvania passed a significantly more invasive law, which provided that anyone

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<sup>11</sup> Materials not widely available are included in the Appendix.

who refused to swear allegiance to Pennsylvania could be disarmed. Act of April 2, 1779, in Acts of the General Assembly of the Commonwealth of Pennsylvania (1775–1781) 193 (Philadelphia 1782).

Pennsylvania amended its right-to-bear arms provision in 1790 to include the seemingly more absolutist language that “the right of the citizens to bear arms in defence of themselves and the State *shall not be questioned*.” See Pa. Const. art. 1, § 21 (emphasis added). The Pennsylvania Supreme Court has nonetheless interpreted this language to permit reasonable gun safety legislation. See, e.g., *Lehman v. Penn. St. Police*, 839 A.2d 265, 273 (Pa. 2003) (“The right to bear arms, although a constitutional right, is not unlimited and may be restricted in the exercise of the police power for the good order of society and protection of the citizens.” (quotation omitted)).

Vermont has also long regulated firearms in the interest of public safety. Since the 1800s, Vermont has barred doing many things while in possession of a deadly weapon, including dueling, attending duels, robbery with intent to kill or maim if resisted, and assault with intent to steal or rob. See 23 Vt. Rev. Stat. §§ 7, 8, 16, 17 (1840) (current version at 13 V.S.A. § 608(b)). Vermont has also regulated pointing firearms towards other persons, 31 Vt. Rev. Laws. §§ 4122, 4123 (1880) (current version at 13 V.S.A. § 4011), and the manufacture, sale, and possession of silencers, 1912 Vt. Acts & Resolves 310, § 1 (current version at 13 V.S.A. § 4010). And Vermont’s 1863 gunpowder storage law, which among other things, required more than one pound of powder be securely stored in a metal canister, undoubtedly

placed a greater burden on the ability to rapidly prepare and fire multiple rounds of ammunition than the need to switch from one ten-round magazine to another. *See* 34 Vt. Gen. Stat. § 28 (1863).

The office of Vermont Attorney General James Oakes advised the Legislature in 1968 that Article 16 merely requires that gun safety legislation “provide appropriate standards to allow the people to possess firearms for the defense of themselves.” Op. Vt. Att’y Gen., No. 75 (Sept. 5, 1968). Assistant Attorney General Louis Peck explained:

Clearly, the constitutional right to bear arms in Vermont is a limited one – for defense of themselves and the state and for no other purpose. The manner in which the people, as a collective body, are to exercise their right to bear arms for the defense of the state is set forth in [the Constitution’s militia clause] . . . .

The people have a right to bear arms for defense of themselves, the legislature however is not precluded from interdicting the possession or ownership of firearms by felons, persons convicted of crimes of violence or those with mental disorders. The legislature may properly require the obtaining of a license or permit and the posting of a bond as a condition precedent to the purchase, carrying or possession of a weapon providing the regulations are reasonable and not prohibitive. Legislation should not be such as to prohibit a person from possessing a weapon for the purpose of defending himself. . . .

Incidentally, neither the Constitution nor the cases in Vermont confer any right to possess a weapon to protect property. . . . One has no constitutional right to possess a weapon for defense of his house, car, horse or cow, or in fact, for hunting purposes other than during the hunting season. . . . The people may only possess weapons for protection of themselves and the state.

*Id* (citations omitted). As discussed below, this understanding that Article 16 permits reasonable gun safety legislation is entirely consistent with this Court’s



precedents and those of the overwhelming majority of other jurisdictions to have considered similar questions.

Vermont has also specifically regulated magazine capacity for decades, albeit in limited circumstances. It has long been illegal for any “person engaged in hunting for wild animals” to “use, carry, or have in his or her possession a machine gun of any kind or description or an autoloading rifle with a magazine capacity of over six cartridges, except a .22 caliber rifle using rim fire cartridges.” No. 119 § 1, p. 125 (1961 Vt., Bien. Sess.) (current version at 10 V.S.A. § 4704); Vt. Dep’t of Fish & Wildlife, General Hunting Information, Machine Guns & Autoloading Rifles & Suppressors.<sup>12</sup>

Magazine capacity also long been subject to regulation by other jurisdictions, having been restricted in some, or all, parts of the United States, since the 1930s.<sup>13</sup> More than 25 jurisdictions currently have restrictions in place, including 9 states and the District of Columbia.<sup>14</sup> And large-capacity magazines were banned

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<sup>12</sup> Available at <http://www.eregulations.com/vermont/hunting/general-hunting-information/>. “Autoloading” is another term for “semiautomatic,” meaning “able to fire repeatedly through an automatic reloading process but requiring release and another pressure of the trigger for each successive shot.” *Autoloading, Semiautomatic*, Merriam-Webster.com.

<sup>13</sup> See, e.g., 1933 S.D. Sess. Laws 245-47; 1934 Va. Acts 137-39; 1931 Ill. Laws 452-53; Act of July 7, 1932, no. 80, § 1, 1932 La. Acts 336; 1934 S.C. Acts 1288.

<sup>14</sup> Rochester, N.Y., Muni. Code No. 47-5; Chi., Ill. Muni. Code §§ 8-20-010, and 8-20-085; Sunnyvale, Cal. Muni. Code § 9.44.050; L.A., Cal. Muni. Code §§ 46.30, 55.13; S.F., Ca. Pol. Code Art. 9, § 619; Oakland, Cal. Code of Ordinances, § 9.38.030-9.38.040 (Ord. No. 13352, § 1(C-D), 1-19-2016); Cook Cty., Ill. Code of Ordinances, § 54.212 (Ord. No. 13-O-32, 7-17-2013); Aurora, Ill. Code of Ordinances, § 29-49; Franklin Park, Ill. Code of Ordinances, 3-13G-3; Oak Park Ill. Muni. Code, § 27-2-1; Highland Park, Ill. Code of Ordinances, § 136.005; Vill. of Deerfield, Ill., Ordinances, § 15-90 (Ord. No. O-18-06); Denver, Co., Code of Ordinances, § 38-130; Albany, Ny., Code § 193-15; Buffalo, Ny., Code § 180-1; New York City, N.Y., Admin. Code, tit. 10, ch. 3, § 10-301; Cal. Penal Code §§ 16350, 16740, 16890, 32310-32390; Colo. Rev. Stat. §§ 18-12-301, 18-12-303; Conn. Gen Stat. §§ 53-202w, 53-

nationwide from 1994-2004 under the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, § 110103.

### 3. Vermont case law

This Court has twice discussed Article 16. Though limited, this precedent—especially when considered alongside other cases interpreting the state constitution—shows that Article 16 permits reasonable firearm legislation.

First, in *State v. Rosenthal*, the Court considered a challenge to a Rutland ordinance barring carrying pistols and certain other weapons without written permission of the mayor or chief of police. 75 Vt. 295, 55 A. 610 (1903). The Court observed that Article 16 and the common law both allowed using a firearm for self-defense, but that other provisions of state law restricted when and where a firearm could be carried or used, such as in schools. *Id.* at 295, 55 A. at 610-11. *Rosenthal* found the ordinance exceeded the legislative power of the Rutland city council because it allowed local officials unlimited discretion to both prohibit what state law allowed (carrying a pistol for self-defense) and to allow what state law prohibited (carrying firearms in situations that, in the Legislature’s view, unreasonably threatened public safety). *Id.*; see Op. Vt. Att’y Gen., No. 75 (*Rosenthal* “holds the ordinance repugnant to the Constitution and the laws of the state because no proper standards were provided; all that was needed was permission without regard to intent or purpose. This case would not preclude the licensing of an individual or the

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202x; D.C. Code Ann. § 7-2506.01(b); Haw. Rev. Stat. Ann. §134-8; Md. Code Ann. § 4-305; Mass. Gen. Laws ch. 140 §§ 121, 131M; N.J. Stat. Ann §§2C:39-1(y), 2C:39-3(j), 2C:39-9(h); N.Y. Penal Law §§ 265.00(23), 265.02(8), 265.10, 265.11, 265.20(7-f), 265.36, 265.37.

registration of a weapon or in fact the requiring of people to make a proper showing of need to possess a weapon for protection of themselves.”). *Compare Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 92 (2d Cir. 2012) (suggesting New York handgun permitting law would violate Second Amendment if “licensing officials have unbridled discretion” to grant or deny permits). The Court did not question the Legislature’s established authority to place reasonable restrictions on the use and possession of deadly weapons.

*Second*, and more recently, in *State v. Duranleau*, the Vermont Supreme Court rejected an Article 16 challenge to a statute that prohibited carrying a loaded rifle or shotgun in a motor vehicle on a public highway. 128 Vt. at 209-10, 260 A.2d at 386. The Court acknowledged that the statute “somewhat conditions the unrestrained carrying and operation of firearms” but found that Article 16’s text “does not suggest that the right to bear arms is unlimited and undefinable.” *Id.* Accordingly, although the statute effectively prevented using a rifle or shotgun for self-defense while in a vehicle, the Court concluded that prohibition was “not such an infringement on the constitutional right to bear arms as to make the statute invalid.” *Id.* This conclusion was “conditioned upon the presumption that the statutory purpose is reasonable, as it must be assumed to be” and “on the necessary circumstance” that no facts demonstrating “an unconstitutional operation of the statute” were before the Court. *Id.* *Duranleau* makes clear that the Legislature may place reasonable conditions on the Article 16 right consistent with its constitutional “power to deal with matters of public . . . health, safety, and welfare.” *Id.* at 211.

*Finally*, interpreting Article 16 to allow reasonable gun safety regulations is consistent with cases interpreting other state constitutional provisions. *See, e.g., Baker v. State*, 170 Vt. 194, 214, 744, A.2d 864, 878-79 (1999) (Article 7 requires courts to evaluate whether a challenged provision “bears a reasonable and just relation to the governmental purpose”); *In re Vt. Supreme Ct. Admin. Dir. No. 17*, 154 Vt. 392, 399, 579 A.2d 1036, 1040 (1990) (rejecting an “absolutist view of the jury trial right” under Article 12 and finding it was not violated by delaying most civil jury trials for budgetary reasons); *In re One Church St.*, 152 Vt. 260, 266, 565 A.2d 1349, 1352 (1989) (under Article 9, taxpayer classifications must “bear a reasonable relation” to their purpose); *State v. Morse*, 84 Vt. 387, 80 A. 189, 192 (1911) (“When the Legislature, in a matter affecting the public health, adopts means and methods which are reasonable and appropriate, not oppressive or discriminatory, constitutional limitations are not transgressed.” (citations omitted)); *cf. State v. Kirchoff*, 156 Vt. 1, 587 A.2d 988 (1991) (applying a reasonableness standard to determine whether Article 11 requires police to obtain a warrant before searching private land).

#### **4. Case law from other jurisdictions**

Case law from other jurisdictions also supports interpreting Article 16 to allow reasonable firearms regulations like 13 V.S.A. § 4021. Large-capacity magazine bans repeatedly have survived federal Second Amendment challenges, and most other States have interpreted their own constitutional right-to-bear-arms provisions to allow reasonable gun safety regulations.

### a. Federal

In *District of Columbia v. Heller*, the U.S. Supreme Court held for the first time that the Second Amendment protects an individual right to possess firearms that is not tied to military service. 554 U.S. 570 (2008).<sup>15</sup> Since then, many large-capacity magazine bans have been challenged under the Second Amendment. Those challenges have repeatedly failed.

*Heller* interpreted the Second Amendment as codifying an existing right “inherited from our English ancestors” that was analogous to the right codified in contemporaneous state constitutions. See 554 U.S. at 599 (quotation omitted). The Court expressly considered Article 16—as well as parallel provisions in the early Pennsylvania, North Carolina, and Massachusetts Constitutions—and opined “that the most likely reading of all four of these pre-Second Amendment state constitutional provisions is that they secured an individual right to bear arms for defensive purposes” that was analogous to the right codified by the Second Amendment in 1789. *Id.* at 600-03. The Court described self-defense as “the *central component* of the right itself.” *Id.* at 599 (emphasis in original).

Based on that interpretation, the Court struck down a D.C. law that totally banned handgun possession in the home. Because the handgun is “the quintessential self-defense weapon” and “the most popular weapon chosen by

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<sup>15</sup> The Second Amendment provides: “A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.” U.S. Const., amend. II.

Americans for self-defense in the home,” the Court concluded that “a complete prohibition of their use is invalid” under the Second Amendment. *Id.* at 629.

*Heller* also made clear, however, that the Second Amendment right is limited and subject to regulation. The Court explained, in a list that expressly did “not purport to be exhaustive,” that nothing in its ruling “should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” *Id.* at 626-27 & n.26. And although the right to keep and carry arms covers weapons “not in existence at the time of the founding,” it protects only “the sorts of weapons . . . in common use” and does not extend to “dangerous and unusual weapons” or to modern “weapons that are most useful in military service—M-16 rifles and the like,” which constitutionally “may be banned.” *Id.* at 582, 627 (quotation omitted).

Following *Heller*, many state and local magazine laws have been challenged under the Second Amendment. Federal courts repeatedly have upheld these laws, finding that they either do not burden the Second Amendment right at all or that any burden is adequately justified by the government’s interest in protecting public safety. *See, e.g., Wilson v. Cook Cty.*, 937 F.3d 1028 (7th Cir. 2019); *Worman v. Healey*, 922 F.3d 26 (1st Cir. 2019), *cert. pet. filed*, No. 19-404 (U.S. Sept. 25, 2019); *Ass’n of N.J. Rifle and Pistol Clubs, Inc. v. Attorney General of N.J.*, 910 F.3d 106 (3d Cir. 2018); *Kolbe*, 849 F.3d 114; *N.Y.S. Rifle*, 804 F.3d 242; *Friedman v. City of*

*Highland Park*, 784 F.3d 406 (7th Cir. 2015); *Fyock v. City of Sunnyvale*, 779 F.3d 991 (9th Cir. 2015); *Heller v. Dist. of Columbia* (“*Heller II*”), 670 F.3d 1244 (D.C. Cir. 2011); *S.F. Veteran Police Officers Ass’n v. City and Cty. of San Francisco*, 18 F. Supp. 3d 997 (N.D. Cal. 2014).<sup>16</sup>

## **b. State**

Most other States apply a deferential “reasonable regulation” standard to gun safety laws challenged on state constitutional grounds. See Adam Winkler, *The Reasonable Right to Bear Arms*, 17 Stan. L. & Pol’y Rev. 597, 598 (2006) (surveying cases decided under forty-two state right-to-bear-arms provisions and finding “the uniform application of a deferential ‘reasonable regulation’ standard to laws infringing on the arms right”).

Indeed, every other State in New England has interpreted its state constitutional right-to-bear-arms provision to permit reasonable firearms regulation. *Bleiler v. Chief, Dover Police Dep’t*, 927 A.2d 1216, 1221-23 (N.H. 2007); *Mosby v. Devine*, 851 A.2d 1031 (R.I. 2004); *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995); *Hilly v. City of Portland*, 582 A.2d 1213 (Me. 1990); *Commonwealth v. Davis*, 343 N.E.2d 847 (Mass. 1976). The New Hampshire Supreme Court, for example, recently held that, “[i]n light of the compelling state interest in protecting

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<sup>16</sup> But see *Duncan v. Becerra*, 366 F. Supp. 3d 1131 (S.D. Cal. 2019) (permanently enjoining enforcement of California law that requires persons who already possess large-capacity magazines to “dispossess” them or face criminal penalties). California has appealed the district court’s ruling in *Duncan*, No. 19-55376 (9th Cir. Apr. 4, 2019), and the district court has partially stayed enforcement of its order pending appeal, 2019 WL 1510340 (S.D. Cal. Apr. 4, 2019).

the public from the hazards involved with guns,” gun control legislation should be upheld so long as the burden on the right to bear arms is “reasonable” in light of “the balance of interests at stake.” *Bleiler*, 927 A.2d at 1221-23. And the Colorado Court of Appeals recently applied an analogous reasonableness standard to uphold that State’s ban on large-capacity magazines against a state constitutional challenge. *Rocky Mt. Gun Owners v. Hickenlooper*, 2018 COA 149 (Colo. Ct. App. 2018), *cert. granted*, No. 18SC817 (Colo. Apr. 22, 2019).

## 5. Policy

Policy considerations also support interpreting Article 16 to permit reasonable gun safety regulations like 13 V.S.A. § 4021. Vermont is not immune from the threat of a mass shooting. Many courts and legislatures have found that banning large-capacity magazines protects public safety by mitigating that threat. Contrary policy arguments have been aired, considered, and rejected by the political branches. *See above* Statement, Section A. The Legislature is better equipped than the Judiciary to wade through and evaluate conflicting data. Indeed this Court has suggested that, in a case involving a state constitutional challenge to a statute, “the very admission that the facts are arguable . . . immunizes from constitutional attack the [legislative] judgment represented by [the challenged] statute.” *See Badgley*, 2010 VT 68, ¶ 38 (quotation omitted). Deference is particularly important here because:

[T]he exact issues being debated in this litigation remain under active investigation and consideration in the political process. . . . A determination of unconstitutionality would end development of the issue in Vermont. The Legislature, by contrast, can experiment with different approaches to



protecting public safety, without irrevocably choosing one until the right approach is clear.

*Id.* ¶¶ 40-41. Provided that the ability to obtain and use a firearm for self-defense is preserved, deciding where to draw the line on contested public safety issues is “precisely the type of judgment that legislatures are allowed to make without second-guessing by a court.” *See Kolbe*, 849 F.3d at 140.

**B. 13 V.S.A. § 4021 does not violate the Article 16 right to bear arms in self-defense.**

Defendant’s Article 16 challenge should be rejected. This is true whether the Court applies the “reasonable regulation” standard, as the State suggests, or the intermediate scrutiny standard applied by some federal courts and urged by defendant below. *See* Defs.’ Mot. to Dismiss 14-23. The former asks whether any burden on the right to bear arms in self-defense is reasonable in light of the government interest behind the statute, *see, e.g., Bleiler*, 927 A.2d at 1221-23, whereas the latter asks whether the challenged statute is “substantially related to the achievement of an important government interest,” *see, e.g., N.Y.S. Rifle*, 804 F.3d at 261. Regardless of how the test is framed, 13 V.S.A. § 4021 easily survives. The State has a compelling interest in reducing the likelihood and harm of a mass shooting, restricting magazine capacity is reasonably related to that interest, and any burden on the right to bear arms in self-defense is, at most, minimal.

**1. The State has a compelling interest in reducing the likelihood and harm of a mass shooting in Vermont.**

Vermont's elected officials decided to restrict the possession and sale of large-capacity magazines in order to reduce the likelihood that Vermonters will be killed or injured in a mass shooting. *See above* Statement, Section A. The State's interest is compelling. *See City of Rutland v. McDonald's Corp.*, 146 Vt. 324, 330, 503 A.2d 1138, 1142 (1985) (noting "the state's paramount obligation to promote and protect the health, safety, morals, comfort and general welfare of the people"); *In re A.D.*, 143 Vt. 432, 435, 467 A.2d 121, 124 (1983) (State "has a legitimate and compelling interest in the safety and welfare" of children within its jurisdiction).

Indeed, numerous courts have found that States have a compelling interest in enacting large-capacity magazine bans to reduce the likelihood and harm of mass shootings within their borders. *See, e.g., Worman*, 922 F.3d at 39 ("Massachusetts indubitably has compelling governmental interests in both public safety and crime prevention." (quotation omitted)); *N.J. Rifle*, 910 F.3d at 119 ("The State of New Jersey has, undoubtedly, a significant, substantial and important interest in protecting its citizens' safety," which "clearly includes reducing the lethality of active shooter and mass shooting incidents." (quotation omitted)); *Kolbe*, 849 F.3d at 139 ("To be sure, Maryland's interest in the protection of its citizenry and the public safety is not only substantial, but compelling."); *N.Y.S. Rifle*, 804 F.3d at 261 ("It is beyond cavil that both [New York and Connecticut] have substantial, indeed compelling, governmental interests in public safety and crime prevention." (quotation omitted)); *Fyock*, 779 F.3d at 1000 (finding it "self-evident that . . .

promoting public safety and reducing violent crime” and “reducing the harm and lethality of gun injuries in general” are “substantial and important government interests” (quotation omitted)); *Heller II*, 670 F.3d at 1262 (holding that District of Columbia has “important interests” in “protecting police officers and controlling crimes”); *Rocky Mt. Gun Owners*, 2018 COA 149, ¶ 19 (Colorado has legitimate government interest in “reduc[ing] th[e] number of people who are killed or shot in mass shootings”).

**2. Restricting magazine capacity is reasonably related to the State’s interest.**

Many courts have likewise concluded that a ban on large-capacity magazines is substantially or reasonably related to the government’s important public safety interests. A mass shooter using large capacity magazines can kill or injure more people without having to pause and reload. As the Seventh Circuit observed:

[A]ssault weapons with large-capacity magazines can fire more shots, faster, and thus can be more dangerous in aggregate. Why else are they the weapons of choice in mass shootings? A ban on assault weapons and large-capacity magazines might not prevent shootings . . . but it may reduce the carnage if a mass shooting occurs.

*Friedman*, 784 F.3d at 411 (upholding Illinois municipality’s magazine law).

And in *N.Y.S. Rifle*, the Second Circuit found a reasonable fit between the Connecticut and New York magazine bans and those States’ compelling public safety interests:

Large-capacity magazines are disproportionately used in mass shootings, like the one in Newtown, in which the shooter used multiple large-capacity magazines to fire 154 rounds in less than five minutes. Like assault weapons, large-capacity magazines result in more shots fired, persons wounded, and wounds per victim than do other gun attacks. Professor Christopher Koper, a

firearms expert relied upon by all parties in both states, stated that it is “particularly” the ban on large-capacity magazines that has the greatest “potential to prevent and limit shootings in the state over the long-run.”

804 F.3d at 263-64 (quotations and alterations omitted). Likewise, in *Kolbe*, the *en banc* Fourth Circuit found a reasonable fit between Maryland’s large-capacity magazine ban and the State’s primary goal of “reduc[ing] the availability of . . . large-capacity magazines so that when a criminal acts, he does so with a less dangerous weapon and less severe consequences.” 849 F.3d at 140 (citation omitted). Notably, both the *N.Y.S. Rifle* and *Kolbe* decisions are part of the legislative record. *See above* Statement, Section A.

The Third Circuit recently discussed multiple incidents where pauses in shooting allowed people to flee or intervene and end a shooting. *See N.J. Rifle*, 910 F.3d at 119-20. For example, “[v]ideos from the Las Vegas shooting in 2017 show that concert attendees would use pauses in firing when the shooter’s high-capacity magazines were spent to flee,” *id.*, as a New York Times compilation of videos from that event demonstrates.<sup>17</sup> An official report from the Parkland shooting, during which the shooter fired quite rapidly at times,<sup>18</sup> similarly indicates that during a

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<sup>17</sup> Malachy Brown et al., *Visual Investigations: 10 Minutes. 12 Gunfire Bursts. 30 Videos. Mapping the Las Vegas Massacre*, N.Y. Times (Oct. 21, 2017), <https://www.nytimes.com/video/us/100000005473328/las-vegas-shooting-timeline-12-bursts.html?search-input-2=las+vegas+shooting+timeline>.

<sup>18</sup> For example, the rate of fire approaches two shots per second beginning 18 seconds into a video compilation published by the Washington Post. *Watch the videos students took during the Florida school shooting*, Wash. Post. (Feb. 15, 2018), [https://www.washingtonpost.com/video/national/see-the-videos-students-took-during-the-florida-school-shooting/2018/02/15/0d873fe2-1293-11e8-a68c-e9374188170e\\_video.html?utm\\_term=.8b1e27aa26e0](https://www.washingtonpost.com/video/national/see-the-videos-students-took-during-the-florida-school-shooting/2018/02/15/0d873fe2-1293-11e8-a68c-e9374188170e_video.html?utm_term=.8b1e27aa26e0).

13-second pause that began with the shooter reloading, 11 potential victims began to flee and nine were able to escape. Marjory Stoneman Douglas High Sch. Pub. Safety Comm'n, Initial Report 32 (Jan. 2, 2019).<sup>19</sup> Requiring a shooter to more frequently stop and reload was an important justification for limiting magazine capacity in Vermont. *See above* Statement, Section A.

Other courts to consider challenges to large-capacity magazine bans have likewise found a reasonable fit between those bans and important governmental public safety interests. *Worman*, 922 F.3d at 39-40; *N.J. Rifle*, 910 F.3d at 119; *Fyock*, 779 F.3d at 1000; *Heller II*, 670 F.3d at 1262-64; *S.F. Veteran Police Officers Ass'n*, 18 F. Supp. 3d at 1003-04; *Rocky Mt. Gun Owners*, 2018 COA 149, ¶¶ 21-26.

This is so even though these laws inevitably will neither remove every large-capacity magazine from circulation nor prevent every mass shooting. “Legislation need not solve all gun problems to be constitutional.” *Rocky Mt. Gun Owners*, 2018 COA 149, ¶ 26. “Courts have consistently upheld less than comprehensive legislation out of a recognition that, for reasons of pragmatism or administrative convenience, the legislature may choose to address problems incrementally.” *OMYA, Inc. v. Town of Middlebury*, 171 Vt. 532, 534, 758 A.2d 777, 781 (2000).

**3. Any burden on the right to bear arms in self-defense is, at most, minimal.**

Section 4021 does not significantly burden the right to bear arms in self-defense. This Court may conclude that large-capacity magazines are not in fact “arms” that

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<sup>19</sup> Available at <http://www.fdle.state.fl.us/MSDHS/CommissionReport.pdf>.

are entitled to protected under Article 16. *Compare Kolbe*, 849 F.3d at 135-37; *Rocky Mt. Gun Owners*, 2018 COA, ¶ 34-36. But assuming Article 16 is implicated by a ban on large-capacity magazines, Section 4021 will not prevent anyone from acquiring a firearm or multiple compliant magazines. Nor will it require anyone to give up any firearm or magazine they lawfully possessed. Once again, the courts to have considered this question are in nearly universal agreement that a ban on large-capacity magazines does not significantly burden the ability to use a firearm for self-defense. *See, e.g., Worman*, 922 F.3d at 37; *N.J. Rifle*, 910 F.3d at 117; *N.Y.S. Rifle*, 804 F.3d at 260; *Heller II*, 670 F.3d at 1262; *Fyock*, 779 F.3d at 999; *S.F. Veteran Police Officers Ass’n*, 18 F. Supp. 3d at 1002-03; .

## **II. The magazine law does not violate the Common Benefits Clause.**

Defendant also argued below that the grandfather provision of 13 V.S.A. § 4021(c) violates the Common Benefits Clause because allowing individuals to retain large capacity magazines acquired before April 2018 is arbitrary and will make enforcing § 4021 more difficult and expensive. This claim fails because it is well-settled in Vermont that the legislature “may choose to address problems incrementally” without violating the Common Benefits Clause. *See OMYA*, 171 Vt. at 534; 758 A.2d at 781.

The Common Benefits Clause “is intended to ensure that the benefits and protections conferred by the state are for the common benefit of the community and are not for the advantage of persons ‘who are a part only of that community.’”

*Baker*, 170 Vt. at 212-14, 744 A.2d at 878-89 (quoting Vt. Const. ch. I, art. 7).<sup>20</sup>

Statutory distinctions that “bear[] a reasonable and just relation to the governmental purpose” at issue do not violate the clause. *Id.*

“Courts have consistently upheld less than comprehensive legislation out of a recognition that, for reasons of pragmatism or administrative convenience, the legislature may choose to address problems incrementally.” *OMYA*, 171 Vt. at 534 (citing *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976)). When reviewing grandfather clauses, courts are “guided by the familiar principles that a statute is not invalid . . . because it might have gone further than it did, that a legislature need not strike at all evils at the same time, and that reform may take one step at a time.” *Dukes*, 427 U.S. at 305. Put another way, “[g]randfather clauses are a long-accepted legislative tool for mitigating the effect of new regulations on persons who have relied on existing law” both generally and in the specific context of firearms. *Kampfer v. Cuomo*, 643 F. App’x 43, 44 (2d Cir. 2016) (rejecting Equal Protection claim based on grandfather clause in New York law banning assault weapons and large-capacity magazines).

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<sup>20</sup> The Common Benefits Clause reads in full:

That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community; and that the community hath an indubitable, unalienable, and indefeasible right, to reform or alter government, in such manner as shall be, by that community, judged most conducive to the public weal.

Vt. Const. ch. I, art. 7.

Many courts have rejected combined Second Amendment and Equal Protection challenges where the challenged statute neither unconstitutionally burdens Second Amendment rights nor is based on a suspect classification. *See, e.g. Kwong v. Bloomberg*, 723 F.3d 160, 169-72 (2d Cir. 2013); *Nat'l Rifle Ass'n of America, Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F.3d 185, 211-12 (5th Cir. 2012); *Hightower v. Boston*, 693 F.3d 61, 83 (1st Cir. 2012); *Nordyke v. King*, 681 F.3d 1041, 1043, n.2 (9th Cir. 2012).

Here, § 4021 does not violate Article 16 for the reasons described above. And the grandfather clause contained in § 4021(c) is “a long-accepted legislative tool” that “mitigate[s] the effect” of § 4021’s “new regulations on persons who have relied on existing law.” *Kamper*, 643 F. App’x at 44. The Legislature was not required to go “further than it did” and require individuals to divest themselves of large-capacity magazines they lawfully acquired before § 4021 took effect. *Dukes*, 427 U.S. at 305. Rather, the legislature could “choose to address” the problems posed by large-capacity magazines “incrementally” by enacting § 4021 and including a grandfather clause. *OMYA*, 171 Vt. at 534.



## CONCLUSION

For the reasons set forth above, this Court should answer both certified questions in the negative and hold that 13 V.S.A. § 4021 complies with Article 16 and the Common Benefits Clause of the Vermont Constitution.

Dated: October 14, 2019

STATE OF VERMONT

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## **CERTIFICATE OF COMPLIANCE**

Benjamin D. Battles, Solicitor General and Counsel of Record for the appellant State of Vermont, certifies that this brief complies with the word count limit in V.R.A.P. 32(a)(7)(A). According to the word count of the Microsoft Word processing software used to prepare this brief, the text of this brief contains 8,991 words.

A handwritten signature in blue ink, appearing to read 'B. D. Battles', is written over a horizontal line.

Benjamin D. Battles  
Solicitor General

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## Constitution of Vermont - July 8, 1777

WHEREAS, all government ought to be instituted and supported, for the security and protection of the community, as such, and to enable the individuals who compose it, to enjoy their natural rights, and the other blessings which the Author of existence has bestowed upon man; and whenever those great ends of government are not obtained, the people have a right, by common consent, to change it, and take such measures as to them may appear necessary to promote their safety and happiness.

And whereas, the inhabitants of this State have (in consideration of protection only) heretofore acknowledged allegiance to the King of Great Britain, and the said King has not only withdrawn that protection, but commenced, and still continues to carry on, with unabated vengeance, a most cruel and unjust war against them; employing therein, not only the troops of Great Britain, but foreign mercenaries, savages and slaves, for the avowed purpose of reducing them to a total and abject submission to the despotic domination of the British parliament, with many other acts of tyranny, (more fully set forth in the declaration of Congress) whereby all allegiance and fealty to the said King and his successors, are dissolved and at an end; and all power and authority derived from him, ceased in the American Colonies.

And whereas, the territory which now comprehends the State of *Vermont*, did antecedently, of right, belong to the government of *New-Hampshire*; and the former Governor thereof, viz. his Excellency *Benning Wentworth*, Esq., granted many charters of lands and corporations, within this State, to the present inhabitants and others. And whereas, the late Lieutenant Governor *Colden*, of *New York*, with others, did, in violation of the tenth command, covet those very lands; and by a false representation made to the court of Great Britain, (in the year 1764, that for the convenience of trade and administration of justice, the inhabitants were desirous of being annexed to that government,) obtained jurisdiction of those very identical lands, *ex-parte*; which ever was, and is, disagreeable to the inhabitants. And whereas, the legislature of *New-York*, ever have, and still continue to disown the good people of this State, in their landed property, which will appear in the complaints hereafter inserted, and in the 36th section of their present constitution, in which is established the grants of land made by that government.

They have refused to make regents of our lands to the original proprietors and occupants, unless at the exorbitant rate of 2300 dollars fees for each township; and did enhance the quit-rent, three fold, and demanded an immediate delivery of the title derived before, from *New-Hampshire*.

The judges of their supreme court have made a solemn declaration that the charters, conveyances, &c. of the lands included in the before described premises, were utterly null and void, on which said title was founded: in consequence of which declaration, writs of possession have been by them issued, and the sheriff of the county of Albany sent, at the head of six or seven hundred men, to enforce the execution thereof.

They have passed an act, annexing a penalty thereto, of thirty pounds fine and six months imprisonment, on any person who should refuse assisting the sheriff, after being requested, for the purpose of executing writs of possession.

The Governors, *Dunmore*, *Tryon* and *Colden*, have made re-grants of several tracts of land, included in the premises, to certain favorite land jobbers in the government of *New-York*, in direct violation of his Britannic majesty's express prohibition, in the Year 1767.

They have issued proclamations, wherein they have offered large sums of money, for the purpose of apprehending those very persons who have dared boldly, and publicly, to appear in defence of their just rights.

They did pass twelve acts of outlawry, on the 9th day of March, A. D. 1774, empowering the respective judges of their supreme court, to award execution of death against those inhabitants in said district, that they should judge to be offenders, without trial.

They have, and still continue, an unjust claim to those lands, which greatly retards emigration into, and the settlement of, this State.

They have hired foreign troops, emigrants from *Scotland*, at two different times, and armed them, to drive us out of possession.

They have sent the savages on our frontiers, to distress us.

They have proceeded to erect the counties of Cumberland and Gloucester, and establish courts of justice there, after they were discountenanced by the authority of Great Britain.

The free convention of the State of *New-York* at *Harlem*, in the year 1776, unanimously voted, "That all quit-rents, formerly due to the King of Great Britain, are now due and owing to this Convention. Or such future government as shall be hereafter established in this State."

In the several stages of the aforesaid oppressions, we have petitioned his Britannic majesty, in the most humble manner, for redress? and have, at very great expense, received several reports in our favor; and, in other instances, wherein we have petitioned the late legislative authority of New-York, those petitions have been treated with neglect.

And whereas, the local situation of this State, from *New-York*, at the extreme part, is upward of four hundred and fifty miles from the seat of that government, which renders it extreme difficult to continue under the jurisdiction of said State

Therefore, it is absolutely necessary, for the welfare and safety of the inhabitants of this State, that it should be, henceforth, a free and independent State; and that a just, permanent, and proper form of government, should exist in it, derived from, and founded on, the authority of the people only, agreeable to the direction of the honorable American Congress.

We the representatives of the freemen of Vermont, in General Convention met, for the express purpose of forming such a government, confessing the goodness of the Great Governor of the universe, (who alone, knows to what degree of earthly happiness, mankind may attain, by perfecting the arts of government,) in permitting the people of this State, by common consent, and without violence, deliberately to form for themselves, such just rules as they shall think best for governing their future society; and being fully convinced that it is our indispensable duty, to establish such original principles of government, as will best promote the general happiness of the people of this State, and their posterity, and provide for future improvements, without partiality for, or prejudice against, any particular class, sect, or denomination of men whatever, -do, by virtue of authority vested in us, by our constituents, ordain, declare, and establish, the following declaration of rights, and frame of government, to be the CONSTITUTION of this COMMONWEALTH, and to remain in force therein, forever, unaltered, except in such articles, as shall, hereafter, on experience, be found

to require improvement, and which shall, by the same authority of the people, fairly delegated, as this frame of government directs, be amended or improved, for the more effectual obtaining and securing the great end and design of all government, herein before mentioned.

## **CHAPTER I**

### **A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE STATE OF VERMONT**

I. THAT all men are born equally free and independent, and have certain natural, inherent and unalienable rights, amongst which are the enjoying and defending life and liberty; acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety. Therefore, no male person, born in this country, or brought from over sea, ought to be holden by law, to serve any person, as a servant, slave or apprentice, after he arrives to the age of twenty-one Years, nor female, in like manner, after she arrives to the age of eighteen years, unless they are bound by their own consent, after they arrive to such age, or bound by law, for the payment of debts, damages, fines, costs, or the like.

II. That private property ought to be subservient to public uses, when necessity requires it; nevertheless, whenever any particular man's property is taken for the use of the public, the owner ought to receive an equivalent in money.

III. That all men have a natural and unalienable right to worship ALMIGHTY GOD, according to the dictates of their own consciences and understanding, regulated by the word of GOD; and that no man ought, or of right can be compelled to attend any religious worship, or erect, or support any place of worship, or maintain any minister, contrary to the dictates of his conscience; nor can any man who professes the protestant religion, be justly deprived or abridged of any civil right, as a citizen, on account of his religious sentiment, or peculiar mode of religious worship, and that no authority can, or ought to be vested in, or assumed by, any power whatsoever, that shall, in any case, interfere with, or in any manner controul, the rights of conscience, in the free exercise of religious worship: nevertheless, every sect or denomination of people ought to observe the Sabbath, or the Lord's day, and keep up, and support, some sort of religious worship, which to them shall seem most agreeable to the revealed will of GOD.

IV. That the people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same.

V. That all power being originally inherent in, and consequently, derived from, the people; therefore, all officers of government, whether legislative or executive, are their trustees and servants. and at all times accountable to them.

VI. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation or community; and not for the particular emolument or advantage of any single man, family or set of men, who are a part only of that community; and that the community hath an indubitable, unalienable and indefeasible right to reform, alter, or abolish, government, in such manner as shall be, by that community, judged most conducive to the public weal.

VII. That those who are employed in the legislative and executive business of the State, may be restrained from oppression, the people have a right, at such periods as they may think proper, to



reduce their public officers to a private station, and supply the vacancies by certain and regular elections.

VIII. That all elections ought to be free; and that all freemen. having a sufficient, evident, common interest with, and attachment to the community, have a right to elect officers, or be elected into office.

IX. That every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore, is bound to contribute his proportion towards the expense of that protection, and yield his personal service, when necessary, or an equivalent thereto; but no part of a man's property can be justly taken from him, or applied to public uses, without his own consent, or that of his legal representatives; nor can any man who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if he will pay such equivalent; nor are the people bound by any law' but such as they have, in like manner, assented to, for their common good.

X. That, in all prosecutions for criminal offences, a man hath a right to be heard, by himself and his counsel-to demand the cause and nature of his accusation-to be confronted with the witnesses-to call for evidence in his favor, and a speedy public trial, by an impartial jury of the country; without the unanimous consent of which jury, he cannot be found guilty; nor can he be compelled to give evidence against himself; nor can any man be justly deprived of his liberty, except by the laws of the land or the judgment of his peers.

XI. That the people have a right to hold themselves, their houses, papers and possessions free from search or seizure; and therefore warrants without oaths or affirmations first made, affording a sufficient foundation for them, and whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his, her or their property, not particularly described, are contrary to that right, and ought not to be granted.

XII. That no warrant or writ to attach the person or estate. of any freeholder within this State, shall be issued in civil action, without the person or persons, who may request such warrant or attachment, first make oath, or affirm, before the authority who may be requested to issue the same, that he, or they, are in danger of losing his, her or their debts.

XIII. That, in controversies respecting property, and in suits between man and man, the parties have a right to a trial by jury; which ought to be held sacred.

XIV. That the people have a right to freedom of speech, and of writing and publishing their sentiments; therefore, the freedom of the press ought not be restrained.

XV. That the people have a right to bear arms for the defence of themselves and the State; and, as standing armies, in the time of peace, are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil power.

XVI. That frequent recurrence to fundamental principles, and a firm adherence to justice, moderation, temperance, industry and frugality, are absolutely necessary to preserve the blessings of liberty, and keep government free. The people ought, therefore, to pay particular attention to these points, in the choice of officers and representatives, and have a right to exact a due and constant regard to them, from their legislators and magistrates, in the making and executing such laws as are necessary for the good government of the State.

XVII. That all people have a natural and inherent right to emigrate from one State to another, that will receive them, or to form a new State in vacant countries, or in such countries as they can purchase? whenever they think that thereby they can promote their own happiness.

XVIII. That the people have a right to assemble together, to consult for their common good-to instruct their representatives, and to apply to the legislature for redress of grievances, by address, petition or remonstrance.

XIX. That no person shall be liable to be transported out of this State for trial, for any offence committed within this State.

## **CHAPTER II**

### **PLAN OR FRAME OF GOVERNMENT**

SECTION I. THE COMMONWEALTH or STATE of VERMONT, shall be governed, hereafter, by a Governor, Deputy Governor, Council, and an Assembly of the Representatives of the Freemen of the same, in manner and form following.

SECTION II. The supreme legislative power shall be vested in a House of Representatives of the Freemen or Commonwealth or State of *Vermont*.

SECTION III. The supreme executive power shall be vested in a Governor and Council.

SECTION IV. Courts of justice shall be established in every county in this State.

SECTION V. The freemen of this Commonwealth, and their sons, shall be trained and armed for its defence, under such regulations, restrictions and exceptions, as the general assembly shall, by law, direct; preserving always to the people, the right of choosing their colonels of militia, and all commissioned officers under that rank, in such manner, and as often, as by the said laws shall be directed.

SECTION VI. Every man of the full age of twenty-one years, having resided in this State for the space of one whole year, next before the election of representatives, and who is of a quiet and peaceable behaviour, and will take the following oath (or affirmation) shall be entitled to all the privileges of a freeman of this State.

*I \_\_\_\_\_ solemnly swear, by the ever living God, (or affirm, in the presence of Almighty God,) that whenever I am called to give any vote or suffrage, touching any matter that concerns the State of Vermont, I will do it so, as in my conscience, I shall judge will most conduce to the best good of the same, as established by the constitution, without fear or favor of any man.*

SECTION VII. The House of Representatives of the Freemen of this State, shall consist of persons most noted for wisdom and virtue, to be chosen by the freemen of every town in this State, respectively. And no foreigner shall be chosen, unless he has resided in the town for which he shall be elected, one year immediately before said election.

SECTION VIII. The members of the House of Representatives, shall be chosen annually, by ballot, by the freemen of this State, on the first Tuesday of September, forever, (except this present year) and shall meet on the second Thursday of the succeeding October, and shall be stiled the

General Assembly of the Representatives of the Freemen of *Vermont*, and shall have power to choose their Speaker, Secretary of the State, their Clerk, and other necessary officers of the house-sit on their own adjournments-prepare bills and enact them into laws-judge of the elections and qualifications of their own members-they may expel a member, but not a second time for the same cause-They may administer oaths (or affirmations) on examination of witnesses-redress grievances-impeach State criminals-grant charters of incorporation-constitute towns, boroughs, cities and counties, and shall have all other powers necessary for the legislature of a free State; but they shall have no power to add to, alter, abolish, or infringe any part of this constitution. And for this present year, the members of the General Assembly shall be chosen on the first Tuesday of March next, and shall meet at the meeting-house, in *Windsor*, on the second Thursday of March next.

SECTION IX. A quorum of the house of representatives shall consist of two-thirds of the whole number of members elected; and having met and chosen their speaker, shall, each of them, before they proceed to business, take and subscribe, as well the oath of fidelity and allegiance herein after directed, as the following oath or affirmation, viz.

" I \_\_\_\_ do solemnly swear, by the ever living God, (or, I do solemnly affirm in the presence of Almighty God) that as a member of this assembly, I will not propose or assent to any bill, vote, or resolution, which shall appear to me injurious to the people; nor do or consent to any act or thing whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared in the Constitution of this State; but will, in all things' conduct myself as a faithful, honest representative and guardian of the people, according to the best of my judgment and abilities."

And each member, before he takes his seat, shall make and subscribe the following declaration, viz.

" I \_\_\_\_ do believe in one God, the Creator and Governor of the Diverse, the rewarder of the good and punisher of the wicked. And I do acknowledge the scriptures of the old and new testament to be given by divine inspiration, and own and profess the protestant religion."

And no further or other religious test shall ever, hereafter, be required of any civil officer or magistrate in this State.

SECTION X. Delegates to represent this State in Congress shall be chosen, by ballot, by the future General Assembly, at their first meeting, and annually, forever afterward, as long as such representation shall be necessary. Any Delegate may be superseded, at any time. by the General Assembly appointing another in his stead. No man shall sit in Congress longer than two years successively, nor be capable of re election for three years afterwards; and no person who holds any office in the gift of the Congress, shall, thereafter, be elected to represent this State in Congress.

SECTION XI. If any town or towns shall neglect or refuse to elect and send representatives to the General Assembly, two thirds of the members of the towns, that do elect and send representatives, (provided they be a majority of the inhabited towns of the whole State) when met, shall have all the powers of the General Assembly, as fully and amply, as if the whole were present.

SECTION XII. The doors of the house in which the representatives of the Greene of this State, shall sit, in General Assembly, shall be and remain open for the admission of all persons, who behave decently, except only, when the welfare of this State may require the doors to be shut.

SECTION XIII. The votes and proceedings of the General Assembly shall be printed, weekly, during their sitting, with the yeas and nays, on any question, vote or resolution, where one-third of the members require it; (except when the votes are taken by ballot) and when the yeas and nays are so taken, every member shall have a right to insert the reasons of his votes upon the minutes, if he desire it.

SECTION XIV. To the end that laws, before they are enacted, may be more maturely considered, and the inconveniency of hasty determination as much as possible prevented, all bills of public nature, shall be first laid before the Governor and Council, for their perusal and proposals of amendment, and shall be printed for the consideration of the people, before they are read in General Assembly, for the last time of debate and amendment; except temporary acts, which, after being laid before the Governor and Council, may (in case of sudden necessity) be passed into laws; and no other shall be passed into laws, until the next session of assembly. And for the more perfect satisfaction of the public, the reasons and motives for making such laws, shall be fully and clearly expressed and set forth in their preambles.

SECTION XV. The style of the laws of this State shall be, -" Be it enacted, and it is hereby enacted, by the Representatives of the Freemen of the State of Vermont, in General Assembly met, and by the authority of the same."

SECTION XVI. In order that the Freemen of this State might enjoy the benefit of election, as equally as may be, each town within this State, that consists, or may consist, of eighty taxable inhabitants, within one septenary or seven years, next after the establishing this constitution, may hold elections therein, and choose each, two representatives; and each other inhabited town in this State may, in like manner, choose each, one representative, to represent them in General Assembly, during the said septenary or seven years; and after that, each inhabited town may, in like manner, hold such election, and choose each, one representative, forever thereafter.

SECTION XVII. The Supreme Executive Council of this State, shall consist of a Governor, Lieutenant-Governor, and twelve persons, chosen in the following manner, viz. The Freemen of each town, shall, on the day of election for choosing representatives to attend the General Assembly, bring in their votes -for Governor, with his name fairly written, to the constable, who shall seal them up, and write on them, votes for the Governor, and deliver them to the representative chosen to attend the General Assembly; and, at the opening of the General Assembly, there shall be a committee appointed out of the Council and Assembly, who, after being duly sworn to the faithful discharge of their trust, shall proceed to receive, sort, and count, the votes for the Governor, and declare the person who has the major part of the votes, to be Governor, for the year ensuing. And if there be no choice made, then the Council and General Assembly, by their joint ballot. shall make choice of a Governor.

The Lieutenant Governor and Treasurer, shall be chosen in the manner above directed; and each freeman shall give in twelve votes for twelve councillors, in the same manner; and the twelve highest in nomination shall serve for the ensuing year as Councillors.

The Council that shall act in the recess of this Convention, shall supply the place of a Council for the next General Assembly, until the new Council be declared chosen. The Council shall meet annually, at the same time and place with the General Assembly; and every member of the Council shall be a Justice of the Peace for the whole State, by virtue of his office.

SECTION XVIII. The Governor, and in his absence, the Lieutenant or Deputy Governor, with the Council-seven of whom shall be a quorum-shall have power to appoint and commissionate all officers, (except those who are appointed by the General Assembly,) agreeable to this frame of government, and the laws that may be made hereafter; and shall supply every vacancy in any office, occasioned by death, resignation, removal or disqualification, until the office can be filled, in the time and manner directed by law or this constitution. They are to correspond with other States, and transact business with officers of government, civil and military; and to prepare such business as may appear to them necessary to lay before the General Assembly. They shall sit as judges to hear and determine on impeachments, taking to their assistance, for advice only, the justices of the supreme court; and shall have power to grant pardons, and remit fines, in all cases whatsoever, except cases of impeachment, and in cases of treason and murder-shall have power to grant reprieves, but not to pardon, until the end of the next session of the Assembly: but there shall be no remission or mitigation of punishment, on impeachments, except by act of legislation. They are also, to take care that the laws be faithfully executed. They are to expedite the execution of such measures as may be resolved upon by General Assembly; and they may draw upon the Treasurer for such sums as may be appropriated by the House: they may also lay embargoes, or prohibit the exportation of any commodity for any time, not exceeding thirty days, in the recess of the House only: they may grant such licenses as shall be directed by law, and shall have power to call together the General Assembly, when necessary, before the day to which they shall stand adjourned. The Governor shall be commander-in-chief of the forces of the State; but shall not command in person, except advised thereto by the Council, and then, only as long as they shall approve thereof. The Governor and Council shall have a Secretary, and keep fair books of their proceedings, wherein any Councillor may enter his dissent, with his reasons to support it.

SECTION XIX. All commissions shall be in the name of the freemen of the State of Vermont, sealed with the State seal, signed by the Governor, and in his absence, the Lieutenant Governor, and attested by the Secretary; which seal shall be kept by the Council.

SECTION XX. Every officer of State, whether judicial or executive, shall be liable to be impeached by the General Assembly, either when in office, or after his resignation, or removal for maladministration. All impeachments shall be before the Governor or Lieutenant Governor and Council, who shall hear and determine the same.

SECTION XXI. The supreme court, and the several courts of common pleas of this State shall, besides the powers usually exercised by such courts, have the powers of a court of chancery, so far as relates to perpetuating testimony, obtaining evidence from places not within this State, and the care of persons and estates of those who are *non compos mentis*, and such other powers as may be found necessary by future General Assemblies, not inconsistent with this constitution.

SECTION XXII. Trials shall be by jury; and it is recommended to the legislature of this State to provide by law, against every corruption or partiality in the choice, and return, or appointment, of juries.

SECTION XXIII. All courts shall be open, and justice shall be impartially administered, without corruption or unnecessary delay; all their officers shall be paid an adequate, but moderate, compensation for their services; and if any officer shall take greater or other fees than the laws allow him, either directly or indirectly, it shall ever after disqualify him from holding any office in this State.

SECTION XXIV. All prosecution shall commence in the name and by the authority of the freemen of the State of *Vermont*, and all indictments shall conclude with these words, " against the

peace and dignity of the same." The style of all process hereafter, in this State, shall be,-The State of *Vermont*.

SECTION XXV. The person of a debtor, where there is not a strong presumption of fraud, shall not be continued in prison, after delivering up, *bone fide*, all his estate, real and personal, for the use of his creditors, in such manner as shall be hereafter regulated by law. All prisoners shall be bailable by sufficient securities, unless for capital offences, when the proof is evident or presumption great.

SECTION XXVI. Excessive bail shall not be exacted for bailable offences: and all fines shall be moderate.

SECTION XXVII. That the General Assembly, when legally formed, shall appoint times and places for county elections, and at such times and places, the freemen in each county respectively, shall have the liberty of choosing the judges of inferior court of common pleas, sheriff', justices of the peace, and judges of probates, commissioned by the Governor and Council, during good behavior, removable by the General Assembly upon proof of mal-administration.

SECTION XXVIII. That no person, shall be capable of holding any civil office, in this State, except he has acquired, and maintains a good moral character.

SECTION XXIX. All elections, whether by the people or in General Assembly, shall be by ballot, free and voluntary: and any elector who shall receive any gift or reward for his vote, In meat, drink, monies or otherwise' shall forfeit his right to elect at that time, and suffer such other penalty as future laws shall direct. And any person who shall, directly or indirectly, give, promise, or bestow, any such rewards to be elected, shall, thereby, be rendered incapable to serve for the ensuing year.

SECTION XXX. All fines, license money, fees and forfeitures, shall be paid, according to the direction hereafter to be made by the General Assembly.

SECTION XXXI. All deeds and conveyances of land shall be. recorded in the town clerk's office, in their respective towns.

SECTION XXXII. The printing presses shall-be free to every person who undertakes to examine the proceedings of the legislature or any part of government.

SECTION XXXIII. As every freeman, to preserve his independence (if without a sufficient estate) ought to have some profession, calling, trade or farm, whereby he may honestly subsist, there can be no necessity for, nor use in, establishing offices of profit, the usual effects of which are dependence and servility, unbecoming freemen, in the possessors or expectants; faction, contention, corruption and disorder among people. But if any man is called into public service, to the prejudice of his private affairs, he has a right to a reasonable compensation; and whenever an office, through increase of fees, or otherwise, becomes so profitable as to occasion many to apply for it the profits ought to be lessened by the legislature.

SECTION XXXIV. The future legislature of this State, shall regulate entails, in such manner as to prevent perpetuities.

SECTION XXXV. To deter more effectually from the commission of crimes, by continued visible punishment of long duration, and to make sanguinary punishments less necessary; houses ought to

be provided for punishing, by hard labor, those who shall be convicted of crimes not capital; wherein the criminal shall be employed for the benefit of the public, or for reparation of injuries done to private persons; and all persons, at proper times, shall be admitted to see the prisoners at their labor.

SECTION XXXVI. Every officer, whether judicial, executive or military, in authority under this State. shall take the following oath or affirmation of allegiance, and general oath of office, before he enter on the execution of his office.

#### THE OATH OR AFFIRMATION OF ALLEGIANCE

" I \_\_\_\_ do solemnly swear by the ever living God, (or affirm in presence of Almighty God,) that I will be true and faithful to the State of *Vermont*; and that I will not, directly or indirectly do any act or thing, prejudicial or injurious, to the constitution or government thereof, as established by Convention."

#### THE OATH OR AFFIRMATION OF OFFICE

" I \_\_\_\_ do solemnly swear by the ever living God, (or affirm in presence of Almighty God) that I will faithfully execute the office of for the of ; and will do equal right and justice to all men, to the best of my judgment and abilities, according to law."

SECTION XXXVII. No public tax, custom or contribution shall be imposed upon, or paid by, the people of this State, except by a law for that purpose; and before any law be made for raising it, the purpose for which any tax is to be raised ought to appear clear to the legislature to be of more service to the community than the money would be, if not collected; which being well observed, taxes can never be burthens.

SECTION XXXVIII. Every foreigner of good character, who comes to settle in this State, having first taken an oath or affirmation of allegiance to the same, may purchase, or by other just means acquire, hold, and transfer, land or other real estate; and after one years residence, shall be deemed a free denizen thereof, and intitled to all the rights of a natural born subject of this State; except that he shall not be capable of being elected a representative, until after two years residence.

SECTION XXXIX. That the inhabitants of this State, shall have liberty to hunt and fowl, in seasonable times, on the lands they hold, and on other lands (not enclosed;) and, in like manner, to fish in all beatable and other waters, not private property, under proper regulations, to be hereafter made and provided by the General Assembly.

SECTION XL. A school or schools shall be established in each town, by the legislature, for the convenient instruction of youth, with such salaries to the masters, paid by each town; making proper use of school lands in each town, thereby to enable them to instruct youth at low prices. One grammar school in each county, and one university in this State, ought to be established by direction of the General Assembly.

SECTION XLI. Laws for the encouragement of virtue and prevention of vice and immorality, shall be made and constantly kept in force; and provision shall be made for their due execution; and all religious societies or bodies of men, that have or may be hereafter united and incorporated, for the advancement of religion and learning, or for other pious and charitable purposes, shall be

encouraged and protected in the enjoyment of the privileges, immunities and estates which they, in justice, ought to enjoy, under such regulations; as the General Assembly of this State shall direct.

SECTION XLII. All field and staff officers, and commissioned officers of the army, and all general officers of the militia, shall be chosen by the General Assembly.

SECTION XLIII. The declaration of rights is hereby declared to be part of the Constitution of this State, and ought never to be violated, on any presence whatsoever.

SECTION XLIV. In order that the freedom of this Commonwealth may be preserved inviolate, forever, there shall be chosen, by ballot, by the freemen of this State, on the last Wednesday in March, in the year one thousand seven hundred and eighty-five, and on the last Wednesday in March, in every seven years thereafter, thirteen persons, who shall be chosen in the same manner the council is chosen- except they shall not be out of the Council or General Assembly-to be called the Council of Censors; who shall meet together, on the first Wednesday of June next ensuing their election; the majority of whom shall be a quorum in every case, except as to calling a Convention, in which two-thirds of the whole number elected shall agree; mod whose duty it shall be to enquire whether the constitution has been preserved inviolate, in every part; and whether the legislative and executive branches of government have performed their duty as guardians of the people; or assumed to themselves, or exercised, other or greater powers, than they are entitled to by the constitution. They are also to enquire whether the public taxes have been justly laid and collected, in all parts of this Commonwealth-in what manner the public monies have been disposed of, and whether the laws have been duly executed. For these purposes they shall have power to send for persons, papers and records; they shall have authority to pass public censures-to order impeachments, and to recommend to the legislature the repealing such laws as appear to them to have been enacted contrary to the principles of the constitution. These powers they shall continue to have, for and during the space of one year from the day of their election, and no longer. The said Council of Censors shall also have power to call a Convention, to meet within two years after their sitting, if there appears to them an absolute necessity of amending any article of this constitution which may be defective-explaining such as may be thought not clearly expressed, and of adding such as are necessary for the preservation of the rights and happiness of the people; but the articles to be amended, and the amendments proposed, and such articles as are proposed to be added or abolished, shall be promulgated at least six months before the day appointed for the election of such convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject.

(1) Verified from "Vermont State Papers; Being a Collection of Records and Documents, Connected with the Assumption and Establishment of Government by the People of Vermont: together with the Journal of the Council of Safety, the First Constitution, the early Journals of the General Assembly, and the Laws from the year 1779 to 1786, inclusive. To which are added the Proceedings of the First and Second Councils of Censors. Compiled and Published by William Slade Jun. Secretary of State, Middlebury: J. W. Copeland, Printer. 1823." pp. 241-255.

The State of Vermont was originally claimed by Massachusetts, New Hampshire, and New York, and at the commencement of the revolutionary struggle she not only sought independence from British rule, but from the State of New York, which claimed sovereignty over the territory to the west bank of the Connecticut River, and from New Hampshire, which contested the claims of both New York and Vermont. In March, 1781, Massachusetts assented to the independence of Vermont, which adjusted her difficulties with New Hampshire in 1782, but it was 1790 before New York consented to her admission into the Union



This constitution was framed by a convention which assembled at Windsor, July 2, 1777, and completed its labors July 8, 1777. It was not submitted to the people for ratification. It was affirmed by the legislature at its sessions in 1780 and 1782, and declared to be a part of the laws of the State. The Convention subsequently met, on December 24, 1777, after the time of election and the day of meeting of the Assembly.

(2) The convention which met on July 2, 1777, " ordered that the first election should be holden in December, 1777, and that the General Assembly, thus elected should meet at Bennington, in January, 1778. The publick attention being arrested by the evacuation of Tyconderoga, and the progress of the enemy under General Burgoyne; the constitution was not printed, seasonable, to have the election holden in December. The convention was therefore, summoned, by the Council of Safety, to meet at Windsor, on the 24th of Dec. 1777." They met and revised the constitution in this particular.

(3) The Council of Safety.

## **Constitution of Pennsylvania - September 28, 1776**

WHEREAS all government ought to be instituted and supported for the security and protection of the community as such, and to enable the individuals who compose it to enjoy their natural rights, and the other blessings which the Author of existence has bestowed upon man; and whenever these great ends of government are not obtained, the people have a right, by common consent to change it, and take such measures as to them may appear necessary to promote their safety and happiness. AND WHEREAS the inhabitants of this commonwealth have in consideration of protection only, heretofore acknowledged allegiance to the king of Great Britain; and the said king has not only withdrawn that protection, but commenced, and still continues to carry on, with unabated vengeance, a most cruel and unjust war against them, employing therein, not only the troops of Great Britain, but foreign mercenaries, savages and slaves, for the avowed purpose of reducing them to a total and abject submission to the despotic domination of the British parliament, with many other acts of tyranny, (more fully set forth in the declaration of Congress) whereby all allegiance and fealty to the said king and his successors, are dissolved and at an end, and all power and authority derived from him ceased in these colonies. AND WHEREAS it is absolutely necessary for the welfare and safety of the inhabitants of said colonies, that they be henceforth free and independent States, and that just, permanent, and proper forms of government exist in every part of them, derived from and founded on the authority of the people only, agreeable to the directions of the honourable American Congress. We, the representatives of the freemen of Pennsylvania, in general convention met, for the express purpose of framing such a government, confessing the goodness of the great Governor of the universe (who alone knows to what degree of earthly happiness mankind may attain, by perfecting the arts of government) in permitting the people of this State, by common consent, and without violence, deliberately to form for themselves such just rules as they shall think best, for governing their future society, and being fully convinced, that it is our indispensable duty to establish such original principles of government, as will best promote the general happiness of the people of this State, and their posterity, and provide for future improvements, without partiality for, or prejudice against any particular class, sect, or denomination of men whatever, do, by virtue of the authority vested in use by our constituents, ordain, declare, and establish, the following Declaration of Rights and Frame of Government, to be the CONSTITUTION of this commonwealth, and to remain in force therein for ever, unaltered, except in such articles as shall hereafter on experience be found to require improvement, and which shall by the same authority of the people, fairly delegated as this frame of government directs, be amended or improved for the more effectual obtaining and securing the great end and design of all government, herein before mentioned.

### **A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE COMMONWEALTH OR STATE OF PENNSYLVANIA**

I. That all men are born equally free and independent, and have certain natural, inherent and inalienable rights, amongst which are, the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

II. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understanding: And that no man ought or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against, his own free will and consent: Nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments or peculiar mode of religious worship: And that no authority can or ought to be

vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner controul, the right of conscience in the free exercise of religious worship.

III. That the people of this State have the sole, exclusive and inherent right of governing and regulating the internal police of the same.

IV. That all power being originally inherent in, and consequently derived from, the people; therefore all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them.

V. That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or community; and not for the particular emolument or advantage of any single man, family, or sort of men, who are a part only of that community, And that the community hath an indubitable, unalienable and indefeasible right to reform, alter, or abolish government in such manner as shall be by that community judged most conducive to the public weal.

VI. That those who are employed in the legislative and executive business of the State, may be restrained from oppression, the people have a right, at such periods as they may think proper, to reduce their public officers to a private station, and supply the vacancies by certain and regular elections.

VII. That all elections ought to be free; and that all free men having a sufficient evident common interest with, and attachment to the community, have a right to elect officers, or to be elected into office.

VIII. That every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore is bound to contribute his proportion towards the expence of that protection, and yield his personal service when necessary, or an equivalent thereto: But no part of a man's property can be justly taken from him, or applied to public uses, without his own consent, or that of his legal representatives: Nor can any man who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if he will pay such equivalent, nor are the people bound by any laws, but such as they have in like manner assented to, for their common good.

IX. That in all prosecutions for criminal offences, a man hath a right to be heard by himself and his council, to demand the cause and nature of his accusation, to be confronted with the witnesses, to call for evidence in his favour, and a speedy public trial, by an impartial jury of the country, without the unanimous consent of which jury he cannot be found guilty; nor can he be compelled to give evidence against himself; nor can any man be justly deprived of his liberty except by the laws of the land, or the judgment of his peers.

X. That the people have a right to hold themselves, their houses, papers, and possessions free from search and seizure, and therefore warrants without oaths or affirmations first made, affording a sufficient foundation for them, and whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his or their property, not particularly described, are contrary to that right, and ought not to be granted.

XI. That in controversies respecting property, and in suits between man and man, the parties have a right to trial by jury, which ought to be held sacred.

XII. That the people have a right to freedom of speech, and of writing, and publishing their sentiments; therefore the freedom of the press ought not to be restrained.

XIII. That the people have a right to bear arms for the defence of themselves and the state; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; And that the military should be kept under strict subordination to, and governed by, the civil power.

XIV. That a frequent recurrence to fundamental principles, and a firm adherence to justice, moderation, temperance, industry, and frugality are absolutely necessary to preserve the blessings of liberty, and keep a government free: The people ought therefore to pay particular attention to these points in the choice of officers and representatives, and have a right to exact a due and constant regard to them, from their legislatures and magistrates, in the making and executing such laws as are necessary for the good government of the state.

XV. That all men have a natural inherent right to emigrate from one state to another that will receive them, or to form a new state in vacant countries, or in such countries as they can purchase, whenever they think that thereby they may promote their own happiness.

XVI. That the people have a right to assemble together, to consult for their common good, to instruct their representatives, and to apply to the legislature for redress of grievances, by address, petition, or remonstrance.

## **PLAN OR FRAME OF GOVERNMENT FOR THE COMMONWEALTH OR STATE OF PENNSYLVANIA**

SECTION 1. The commonwealth or state of Pennsylvania shall be governed hereafter by an assembly of the representatives of the freemen of the same, and a president and council, in manner and form following-

SECT. 2. The supreme legislative power shall be vested in a house of representatives of the freemen of the commonwealth or state of Pennsylvania.

SECT. 3. The supreme executive power shall be vested in a president and council.

SECT. 4. Courts of justice shall be established in the city of Philadelphia, and in every county of this state.

SECT. 5. The freemen of this commonwealth and their sons shall be trained and armed for its defence under such regulations, restrictions, and exceptions as the general assembly shall by law direct, preserving always to the people the right of choosing their colonels and all commissioned officers under that rank, in such manner and as often as by the said laws shall be directed.

SECT. 6. Every freemen of the full age of twenty-one Years, having resided in this state for the space of one whole Year next before the day of election for representatives, and paid public taxes during that time, shall enjoy the right of an elector: Provided always, that sons of freeholders of the age of twenty-one years shall be intitled to vote although they have not paid taxes.

SECT. 7. The house of representatives of the freemen of this commonwealth shall consist of persons most noted for wisdom and virtue, to be chosen by the freemen of every city and county of

this commonwealth respectively. And no person shall be elected unless he has resided in the city or county for which he shall be chosen two years immediately before the said election; nor shall any member, while he continues such, hold any other office, except in the militia.

SECT. 8. No person shall be capable of being elected a member to serve in the house of representatives of the freemen of this commonwealth more than four years in seven.

SECT. 9. The members of the house of representatives shall be chosen annually by ballot, by the freemen of the commonwealth, on the second Tuesday in October forever, (except this present year,) and shall meet on the fourth Monday of the same month, and shall be stiled, The general assembly of the representatives of the freemen of Pennsylvania, and shall have power to choose their speaker, the treasurer of the state, and their other officers; sit on their own adjournments; prepare bills and enact them into laws; judge of the elections and qualifications of their own members; they may expel a member, but not a second time for the same cause; they may administer oaths or affirmations on examination of witnesses; redress grievances; impeach state criminals; grant charters of incorporation; constitute towns, boroughs, cities, and counties; and shall have all other powers necessary for the legislature of a free state or commonwealth: But they shall have no power to add to, alter, abolish, or infringe any part of this constitution.

SECT. 10. A quorum of the house of representatives shall consist of two-thirds of the whole number of members elected; and having met and chosen their speaker, shall each of them before they proceed to business take and subscribe, as well the oath or affirmation of fidelity and allegiance hereinafter directed, as the following oath or affirmation, viz:

I do swear (or affirm) that as a member of this assembly, I will not propose or assent to any bill, vote, or resolution, which shall appear to be free and injurious to the people; nor do or consent to any act or thing whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared in the constitution of this state; but will in all things conduct myself as a faithful honest representative and guardian of the people, according to the best of my judgment and abilities.

And each member, before he takes his seat, shall make and subscribe the following declaration, viz:

I do believe in one God, the creator and governor of the universe, the rewarder of the good and the punisher of the wicked. And I do acknowledge the Scriptures of the Old and New Testament to be given by Divine inspiration.

And no further or other religious test shall ever hereafter be required of any civil officer or magistrate in this State.

SECT. 11. Delegates to represent this state in congress shall be chosen by ballot by the future general assembly at their first meeting, and annually forever afterwards, as long as such representation shall be necessary. Any delegate may be superseded at any time, by the general assembly appointing another in his stead. No man shall sit in congress longer than two years successively, nor be capable of reelection for three Years afterwards: and no person who holds any office in the gift of the congress shall hereafter be elected to represent this commonwealth in congress.

SECT. 12. If any city or cities, county or counties shall neglect or refuse to elect and send representatives to the general assembly, two-thirds of the members from the cities or counties that do elect and send representatives, provided they be a majority of the cities and counties of the whole state, when met, shall have all the powers of the general assembly, as fully and amply as if the whole were present.

SECT. 13. The doors of the house in which the representatives of the freemen of this state shall sit in general assembly, shall be and remain open for the admission of all persons who behave decently, except only when the welfare of this state may require the doors to be shut.

SECT. 14. The votes and proceedings of the general assembly shall be printed weekly during their sitting, with the yeas and nays, on any question, vote or resolution, where any two members require it except when the vote is taken by ballot; and when the yeas and nays are so taken every member shall have a right to insert the reasons of his vote upon the minutes, if he desires it.

SECT. 15. To the end that laws before they are enacted may be more maturely considered, and the inconvenience of hasty determinations as much as possible prevented, all- bills of public nature shall be printed for the consideration of the people, before they are read in general assembly the last time for debate and amendment; and, except on occasions of sudden necessity, shall not be passed into laws until the next session of assembly; and for the more perfect satisfaction of the public, the reasons and motives for making such laws shall be fully and clearly expressed in the preambles.

SECT. 16. The stile of the laws of this commonwealth shall be, " Be it enacted, and it is hereby enacted by the representatives of the freemen of the commonwealth of Pennsylvania in general assembly met, and by the authority of the same." And the general assembly shall affix their seal to every bill, as soon as it is enacted into a law, which seal shall be kept by the assembly, and shall be called, The seal of the laws of Pennsylvania, and shall not be used for any other purpose.

SECT. 17. The city of Philadelphia and each county of this commonwealth respectively, shall on the first Tuesday of November in this present year, and on the second Tuesday of October annually for the two next succeeding years, viz. the year one thousand seven hundred and seventy-seven, and the year one thousand seven hundred and seventy-eight, choose six persons to represent them in general assembly. But as representation in proportion to the number of taxable inhabitants is the only principle which can at all times secure liberty, and make the voice of a majority of the people the law of the land; therefore the general assembly shall cause complete lists of the taxable inhabitants in the city and each county in the commonwealth respectively, to be taken and returned to them, on or before the last meeting of the assembly elected in the year one thousand seven hundred and seventy-eight, who shall appoint a representation to each, in proportion to the number of taxables in such returns; which representation shall continue for the next seven years afterwards at the end of which, a new return of the taxable inhabitants shall be made, and a representation agreeable thereto appointed by the said assembly, and so on septennially forever. The wages of-the representatives in general assembly, and all other state charges shall be paid out of the state treasury.

SECT. 18. In order that the freemen of this commonwealth may enjoy the benefit of election as equally as may be until the representation shall commence as directed in the foregoing section, each county at its own choice may be divided into districts, hold elections therein, and elect their representatives in the county, and their other elective officers, as shall be hereafter regulated by the general assembly of this state. And no inhabitant of this state shall have more than one annual vote at the general election for representatives in assembly.

SECT. 19. For the present the supreme. executive council of this state shall consist of twelve persons chosen in the follow-in" manner: The freemen of the city of Philadelphia, and of the counties of Philadelphia, Chester, and Bucks, respectively, shall choose by ballot one person for the city, and one for each county aforesaid to serve for three years and no longer, at the time and place for electing representatives in general assembly. The freemen of the counties of Lancaster, York, Cumberland, and Berks, shall, in like manner elect one person for each county respectively, to serve as counsellors for two years and no longer. And the counties of Northampton, Bedford, Northumberland and Westmoreland, respectively, shall, in like manner, elect one person for each county, to serve as counsellors for one year, and no longer. And at the expiration of the time for which each counsellor was chosen to serve, the freemen of the city of Philadelphia, and of the several counties in this state, respectively, shall elect one person to serve as counsellor for three years and no longer; and so on every third year forever. By this mode of election and continual rotation, more men will be trained to public business, there will in every subsequent year be found in the council a number of persons acquainted with the proceedings of the foregoing Years, whereby the business will be more consistently conducted, and moreover the danger of establishing an inconvenient aristocracy will be effectually prevented. All vacancies in the council that may happen by death, resignation, or otherwise, shall be filled at the next general election for representatives in general assembly, unless a particular election for that purpose shall be sooner appointed by the president and council. No member of the general assembly or delegate in congress, shall be chosen a member of the council. The president and vice-president shall be chosen annually by the joint ballot of the general assembly and council, of the members of the council. Any person having served as a counsellor for three successive years, shall be incapable of holding that office for four years afterwards. Every member of the council shall be a justice of the peace for the whole eommon~vealth, by virtue of his office.

In case new additional counties shall hereafter be erected in this state, such county or counties shall elect a counsellor, and such county or counties shall be annexed to the next neighbouring counties, and shall take rotation with such counties.

The council shall meet annually, at the same time and place with the general assembly.

The treasurer of the state, trustees of the loan office, naval officers, collectors of customs or excise, judge of the admiralty, attornies general, sheriffs, and prothonotaries, shall not be capable of a seat in the general assembly, executive council, or continental congress.

SECT. 20. The president, and in his absence the vice-president, with the council, five of whom shall be a quorum, shall have power to appoint and commissionate judges, naval officers, judge of the admiralty, attorney general and all other officers, civil and military, except such as are chosen by the general assembly or the people, agreeable to this frame of government, and the laws that may be made hereafter; and shall supply every vacancy in any office, occasioned by death, resignation, removal or disqualification, until the office can be filled in the time and manner directed by law or this constitution. They are to correspond with other states, and transact business with the officers of government, civil and military; and to prepare such business as may appear to them necessary to lay before the general assembly. They shall sit as judges, to hear and determine on impeachments, taking to their assistance for advice only, the justices of the supreme court. And shall have power to grant pardons and remit fines, in all cases whatsoever, except in cases of impeachment; and in cases of treason and murder, shall have power to grant reprieves, but not to pardon, until the end of the next sessions of assembly; but there shall be no remission or mitigation of punishments on impeachments, except by act of the legislature; they are also to take care that the laws be faithfully executed; they are to expedite the execution of such measures as may be resolved upon by the

general assembly; and they may draw upon the treasury for such sums as shall be appropriated by the house: They may also lay embargoes, or prohibit the exportation of any commodity, for any time, not exceeding thirty days, in the recess of the house only: They may grant such licences, as shall be directed by law, and shall have power to call together the general assembly when necessary, before the day to which they shall stand adjourned. The president shall be commander in chief of the forces of the state, but shall not command in person, except advised thereto by the council, and then only so long as they shall approve thereof. The president and council shall have a secretary, and keep fair books of their proceedings, wherein any counsellor may enter his dissent, with his reasons in support of it.

SECT. 21. All commissions shall be in the name, and by the authority of the freemen of the commonwealth of Pennsylvania, sealed with the state seal, signed by the president or vice-president, and attested by the secretary; which seal shall be kept by the council.

SECT. 22. Every officer of state, whether judicial or executive, shall be liable to be impeached by the general assembly, either when in office, or after his resignation or removal for maladministration: All impeachments shall be before the president or vice-president and council, who shall hear and determine the same.

SECT. 23. The judges of the supreme court of judicature shall have fixed salaries, be commissioned for seven years only, though capable of re-appointment at the end of that term, but removable for misbehaviour at any time by the general assembly; they shall not be allowed to sit as members in the continental congress, executive council, or general assembly, nor to hold any other office civil or military, nor to take or receive fees or perquisites of any kind.

SECT. 24. The supreme court, and the several courts of common pleas of this commonwealth, shall, besides the powers usually exercised by such courts, have the powers of a court of chancery, so far as relates to the perpetuating testimony, obtaining evidence from places not within this state, and the care of the persons and estates of those who are non compos mentis, and such other powers as may be found necessary by future general assemblies, not inconsistent with this constitution.

SECT. 25. Trials shall be by jury as heretofore: And it is recommended to the legislature of this state, to provide by law against every corruption or partiality in the choice, return, or appointment of juries.

SECT. 26. Courts of sessions, common pleas, and orphans courts shall be held quarterly in each city and county; and the legislature shall have power to establish all such other courts as they may judge for the good of the inhabitants of the state. All courts shall be open, and justice shall be impartially administered without corruption or unnecessary delay: All their officers shall be paid an adequate but moderate compensation for their services: And if any officer shall take greater or other fees than the law allows him, either directly or indirectly, it shall ever after disqualify him from holding any office in this state.

SECT. 27. All prosecutions shall commence in the name and by the authority of the freemen of the commonwealth of Pennsylvania; and all indictments shall conclude with these words, "Against the peace and dignity of the same." The style of all process hereafter in this state shall be, The commonwealth of Pennsylvania.



SECT. 28. The person of a debtor, where there is not a strong presumption of fraud, shall not be continued in prison, after delivering Up, bona fide, all his estate real and personal, for the use of his creditors, in such manner as shall be hereafter regulated by law. All prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident, or presumption great.

SECT. 29. Excessive bail shall not be exacted for bailable offences: And all fines shall be moderate.

SECT. 30. Justices of the peace shall be elected by the freeholders of each city and county respectively, that is to say, two or more persons may be chosen for each ward, township, or district, as the law shall hereafter direct: And their names shall be returned to the president in council, who shall commissionate one or more of them for each ward, township, or district so returning, for seven years, removable for misconduct by the general assembly. But if any city or county, ward, township, or district in this commonwealth, shall hereafter incline to change the manner of appointing their justices of the peace as settled in this article, the general assembly may make laws to regulate the same, agreeable to the desire of a majority of the freeholders of the city or county, ward, township, or district so applying. No justice of the peace shall sit in the general assembly unless he first resigns his commission; nor shall he be allowed to take any fees, nor any salary or allowance, except such as the future legislature may grant.

SECT. 31. Sheriffs and coroners shall be elected annually in each city and county, by the freemen; that is to say, two persons for each office, one of whom for each, is to be commissioned by the President in council. No person shall continue in the office of sheriff more than three successive years, or be capable of being again elected during four years afterwards. The election shall be held at the same time and place appointed for the election of representatives: And the commissioners and assessors, and other officers chosen by the people, shall also be then and there elected, as has been usual heretofore, until altered or otherwise regulated by the future legislature of this state.

SECT. 32. All elections, whether by the people or in general assembly, shall be by ballot, free and voluntary: And any elector, who shall receive any gift or reward for his vote, in meat, drink, monies, or otherwise, shall forfeit his right to elect for that time, and suffer such other penalties as future laws shall direct. And any person who shall directly or indirectly give, promise, or bestow any such rewards to be elected, shall be thereby rendered incapable to serve for the ensuing year.

SECT. 33. All fees, licence money, fines and forfeitures heretofore granted, or paid to the governor, or his deputies for the support of government, shall hereafter be paid into the public treasury, unless altered or abolished by the future legislature.

SECT. 34. A register's office for the probate of wills and granting letters of administration, and an office for the recording of deeds, shall be kept in each city and county: The officers to be appointed by the general assembly, removable at their pleasure, and to be commissioned by the president in council.

SECT. 35. The printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any part of government.

SECT. 36. As every freeman to preserve his independence, (if without a sufficient estate) ought to have some profession, calling, trade or farm, whereby he may honestly subsist, there can be no necessity for, nor use in establishing offices of profit, the usual effects of which are dependence and servility unbecoming freemen, in the possessors and expectants; faction, contention, corruption, and

disorder among the people. But if any man is called into public service; to the prejudice of his-private affairs, he has a right to a reasonable compensation: And whenever an office, through increase of fees or otherwise, becomes so profitable as to occasion many to apply for it, the profits ought to be lessened by the legislature.

SECT. 37. The future legislature of this state, shall regulate intails in such a manner as to prevent perpetuities.

SECT. 38. The penal laws as heretofore used shall be reformed by the legislature of this state, as soon as may be, and punishments made in some cases less sanguinary, and in general more proportionate to the crimes.

SECT. 39. To deter more effectually from the commission of crimes by continued visible punishments of long duration, and to make sanguinary punishments less necessary; houses ought to be provided for punishing by hard labour, those who shall be convicted of crimes not capital; wherein the criminals shall be employed for the benefit of the public, or for reparation of injuries done to private persons: And all persons at proper times shall be admitted to see the prisoners at their labour.

SECT. 40. Every officer, whether judicial, executive or military, in authority under this commonwealth, shall take the following oath or affirmation of allegiance, and general oath of office before he enters on the execution of his office.

## **THE OATH OR AFFIRMATION OF ALLEGIANCE**

I do swear (or affirm) that I will be true and faithful to the commonwealth of Pennsylvania: And that I will not directly or indirectly do any act or thing prejudicial or injurious to the constitution or government thereof, as established by the-convention. -

## **THE OATH OR AFFIRMATION OF OFFICE**

I-do swear (or affirm) that I will faithfully execute the office of for the of-and will do equal right and justice to all men, to the best of my judgment and abilities, according to law.

SECT. 41. NO public tax, custom or contribution shall be imposed upon, or paid by the people of this state, except by a law for that purpose: And before any law be made for raising it, the purpose for which any tax is to be raised ought to appear clearly to the legislature to be of more service to the community than the money would be, if not collected; which being well observed, taxes can never be burthens.

SECT. 42. Every foreigner of good character who comes to settle in this state, having first taken an oath or affirmation of allegiance to the same, may purchase, or by other just means acquire, hold, and transfer land or other real estate; and after one year's residence, shall be deemed a free denizen thereof, and entitled to all the rights of a natural born subject of this state, except that he shall not be capable of being elected a representative until after two years residence.

SECT. 43. The inhabitants of this state shall have liberty to fowl and hunt in seasonable times on the lands they hold, and on all other lands therein not inclosed; and in like manner to fish in all boatable waters, and others not private property

SECT. 44. A school or schools shall be established in each county by the legislature, for the convenient instruction of youth, with such salaries to the masters paid by the public, as may enable them to instruct youth at low prices: And all useful learning shall be duly encouraged and promoted In one or more universities.

SECT. 45. Laws for the encouragement of virtue, and prevention of vice and immorality, shall be made and constantly kept in force, and provision shall be made for their due execution: And all religious societies or bodies of men heretofore united or incorporated for the advancement of religion or learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities and estates which they were accustomed to enjoy, or could of right have enjoyed, under the laws and former constitution of this state.

SECT. 46. The declaration of rights is hereby declared to be a part of the constitution of this commonwealth, and ought never to be violated on any presence whatever.

SECT. 47. In order that the freedom of the commonwealth may be preserved inviolate forever, there shall be chosen by ballot by the freemen in each city and county respectively, on the second Tuesday in October, in the Year one thousand seven hundred and eighty-three, and on the second Tuesday in October, in every seventh year thereafter, two persons in each city and county of this state, to be called the COUNCIL OF CENSORS; who shall meet together on the second Monday of November next ensuing their election; the majority of whom shall be a quorum in every case, except as to calling a convention, in which two-thirds of the whole number elected shall agree: And whose duty it shall be to enquire whether the constitution has been preserved inviolate in every part; and whether the legislative and executive branches of government have performed their duty as guardians of the people, or assumed to themselves, or exercised other or greater powers than they are intitled to by the constitution: They are also to enquire whether the public taxes have been justly laid and collected in all parts of this commonwealth, in what manner the public monies have been disposed of, and whether the laws have been duly executed. For these purposes they shall have power to send for persons, papers, and records; they shall have authority to pass public censures, to order impeachments, and to recommend to the legislature the repealing such laws as appear to them to have been enacted contrary to the principles of the constitution. These powers they shall continue to have, for and during the space of one year from the day of their election and no longer: The said council of censors shall also have power to call a convention, to meet within too years after their sitting, if there appear to them an absolute necessity of amending any article of the constitution which may be defective, explaining such as may be thought not clearly expressed, and of adding such as are necessary for the preservation of the rights and happiness of the people: But the articles to be amended, and the amendments proposed, and such articles as are proposed to be added or abolished, shall be promulgated at least six months before the day appointed for the election of such convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject.

Passed in Convention the 28th day of September, 1776, and signed by their order.

BENJ. FRANKLIN, Prest.

(1) The Proceedings Relative to Calling the Conventions of 1776 and 1790 the Minutes of the Convention that formed the present Constitution of Pennsylvania together with the Charter to William Penn the Constitutions of 1776 and 1790 and a view of the Proceedings of the Convention of 1776 and the Council of Censors. Harrisburg: Printed by John S. Wiestling Market Street, 1825. pp. 3S4. Index.

The Constitution of the Commonwealth of Pennsylvania as established by the General Convention carefully compared with the original to which is added a Report of the Committee appointed to enquire Whether the Constitution has been preserved inviolate in every Part and whether the legislative and executive branches of Government, have performed their duty as Guardians of the People or assumed to themselves or exercised other or greater Powers. than they are entitled to by the Constitution.

As adopted by the Council of Censors Published by their Order. Philadelphia: Printed by Francis Bailey, at Yorick s Head in Market Street. M, DCC.LXXXIV. pp. 64.

This constitution was framed by a convention (called in accordance with the expressed wish of the Continental Congress) which assembled at Philadelphia July 15 1776 and completed its labors September 28 1776. It was not submitted to the people for ratification.

00  
Pennsylvania Statutes.



# Laws of Pennsylvania,

FROM THE YEAR ONE THOUSAND SEVEN HUNDRED, TO THE SECOND DAY  
OF APRIL, ONE THOUSAND EIGHT HUNDRED AND ELEVEN.

WITH

References to Reports of Judicial Decisions

IN THE

SUPREME COURT OF PENNSYLVANIA.

BY JOHN PURDON, JUNR.

PHILADELPHIA:

PUBLISHED BY FARRAND, HOPKINS, ZANTZINGER, AND COMPANY.  
Fry and Kammerer, Printers.

1811.

62



## Fines and Recognizances.

173

(Act of 21st March 1806.)

right: *Provided*, The same shall not exceed the fine heretofore affixed by law.

ACT of 11th April 1807. 8 Bioren p. 362.

9. SECT. IV. It shall be the duty of the sheriff of each county in this commonwealth, to account for to the proper officers, and pay over yearly all fines and forfeitures by them respectively received by virtue of their offices, for the use of the commonwealth, under the penalty of double the amount by him or them received, and not paid over, for every neglect or refusal therein.

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## Fire. Firing of Guns.

Penalty on chimnies taking fire	1	Or permitting it to be done	6
Or setting off fire works, &c.	2	Duty of constables, appeal, &c.	7
Extended throughout the state	3	Penalty for setting woods on fire	8
Chimnies on fire in Philadelphia	4		
Firing guns on the last day of the year, &c.	5		

ACT of 26th August 1721. 1 Dallas p. 158. 1 Bioren p. 157. 1 Smith p. 130.

1. SECT. III. If any person or persons within the towns of Chester, Bristol, Germantown, Darby or Chichester, shall set on fire their chimnies to cleanse them, or shall suffer them or any of them to take fire, and blaze out at the top, and be duly convicted thereof, by one credible witness before any one justice of the peace of the said counties, such person or persons shall forfeit and pay for every such offence twenty shillings, for the use of the said towns respectively, where such offence shall happen.

2. SECT. IV. If any person or persons, of what sex, age, degree or quality soever, shall fire any gun or other fire arms, or shall make or cause to be made, or sell or utter, or offer to expose to sale any squibs, rockets or other fire works, or shall cast, throw or fire any squibs, rockets, or other fire works, within the city of Philadelphia, without the governor's special license for the same, of which license due notice shall first be given to the mayor of the said city, such person or persons so offending, and being thereof convicted before any one justice of the peace of the said city, either by confession of the party so offending, or by the view of any of the said justices, or by the oath or affirmation of one or more witnesses, shall for every such offence forfeit and pay the sum of five shillings; one half to the use of the poor of the said city, and the other half to the use of him or them who shall prosecute, and cause such offender to be as aforesaid convicted; which forfeitures shall be levied by distress and sale of the offender's goods as aforesaid; and for want of such distress, if the offender refuse to pay the said forfeiture, he shall be committed to prison, for every such offence, the space of two days, without bail or mainprize: *Provided*, That such conviction be made within ten days after such offence committed.

ACT of 9th February 1750-51. 1 Dallas p. 339. 1 Bioren p. 311. 1 Smith p. 208.

3. SECT. I. If any person or persons whatsoever, within any county town, or within any other town or borough in this province, already built and settled,

*Matthews Rough Enquire*

*Henry B. ...*

T H E  
A C T S  
O F T H E  
General Assembly  
O F T H E

Commonwealth of Pennsylvania,  
Carefully compared with the ORIGINALS.

A N D A N  
A P P E N D I X,

Containing the LAWS now in FORCE, passed between the 30th  
Day of *September* 1775, and the REVOLUTION.

TOGETHER WITH  
The Declaration of Independence; the Constitution of the State of  
Pennsylvania; and the Articles of Confederation of the United  
States of America.

33246

Published by order of the General Assembly.



P H I L A D E L P H I A :  
PRINTED AND SOLD BY FRANCIS BAILEY,  
IN MARKET-STREET.  
M,DCC,LXXXII.



1779.  
The third Year  
of the Common-  
wealth.

*A further supplement to the act, intituled, "An Act for settling the accounts of the late committee and council of safety."*

Passed March 31st, 1779. Recorded in Law Book Vol. I. Page 258, &c.  
Repealed March 1st, 1780.

## CHAPTER CI.

*An ACT for repealing part of an act, intituled, "A further supplement to the act, intituled, An Act for the further security of government; and for disarming persons who shall not have given attestations of allegiance and fidelity to this state, or some other of the united states."*

Preamble. SECTION 1. **W**HEREAS in and by an act, intituled, "*A further supplement to the act, intituled, An Act for the further security of government,*" passed on the fifth day of December last, it is enacted, That every person, now in office or place of trust under this government, shall on or before the first day of April next, and every person hereafter appointed or elected into any office of trust under this government whatsoever, shall, before he enters upon the execution or duties thereof, take and subscribe before the said commissioners, or one of them, the aforesaid oath or affirmation.

Replevins  
issued for  
goods seized  
by any of-  
ficer, to be  
quashed.

SECT. 2. *And whereas* it has been considered, that the officers of this state, who in the day of difficulty and danger accepted places of trust, and thereby exposed themselves in a particular manner to the resentment of the king of Great Britain; and that such persons, and all others who gave assurances of their allegiance to this state, and abjured the king of Great Britain and his successors, on or before the first day of June last, according to the form of the act, intituled, "*An Act for the further security of government,*" passed on the first day of April last, had thereby manifested their attachment to the community of this commonwealth in a satisfactory manner.

And treble  
costs award-  
ed.

SECT. 3. *Be it therefore enacted, and it is hereby enacted, by the representatives of the freemen of the commonwealth of Pennsylvania, in general assembly met, and by the authority of the same,* That the said recited clause is hereby repealed and declared null and void; and that no person who took and subscribed the said oath or affirmation of allegiance and abjuration



abjuration, as prescribed in and by the said act, intituled, "*An Act for the further security of government*," on or before the first day of June last, shall be under any obligation to take and subscribe the oath prescribed in and by the said act, intituled, "*A further supplement to the act*," intituled, "*An Act for the further security of government*," in order to qualify such person to hold or accept any office or place of trust in this government.

SECT. 4. *And whereas* it is very improper and dangerous that persons disaffected to the liberty and independence of this state should possess or have in their own keeping, or elsewhere, any fire arms; or other weapons used in war, or any gun powder.

SECT. 5. *Be it therefore enacted by the authority aforesaid*, That from and after the passing of this act, the lieutenant, or any sub lieutenant of the militia of any county or place within this state, shall be, and is hereby empowered to disarm any person or persons who shall not have taken any oath or affirmation of allegiance to this or any other state, and against whom information on oath shall be given before any justice of the peace, that such person is suspected to be disaffected to the independence of this state; and shall take from every such person any cannon, mortar, or other piece of ordnance, or any blunderbuss, wall piece, musket, fusée, carbine or pistols, or other fire arms, or any hand gun; and any sword, cutlass, bayonet, pike, or other warlike weapon, out of any building, house or place belonging to such person.

SECT. 6. *And be it further enacted by the authority aforesaid*, That a complete list of all arms which have been or shall be taken from any person or persons by any lieutenant, sub lieutenant, or by any other person or persons acting under his or their authority, shall be made out and lodged by such lieutenant or sub lieutenant, or other person, in the office of the clerk of the peace of the proper county, and the persons names from whom the same were taken, which shall be open to the inspection of any person requesting the same, paying two shillings and six pence therefor; and such lieutenant or sub lieutenant shall, and is hereby declared to be accountable to this state for the said arms.

SECT. 7. *And be it further enacted by the authority aforesaid*, That the justices of the peace within this commonwealth, and each and every of them, shall, and they are hereby authorized and empowered to administer all and every of the oaths and affirmations required to be taken by the act, intituled, "*A further supplement to the act*," intituled,

C c c

"An

1779.

The third Year  
of the Common-  
wealth.

Lieutenants  
empowered  
to disarm  
the disaf-  
fected.

List of the  
arms and of  
the persons  
disarmed,  
to be left  
with the  
clerk of  
the peace.

Justices im-  
powered to  
administer  
the oath,  
&c.



THE  
**REVISED STATUTES**  
OF THE  
**STATE OF VERMONT,**

PASSED NOVEMBER 19, 1839.

TO WHICH ARE ADDED  
SEVERAL PUBLIC ACTS NOW IN FORCE;

AND TO WHICH ARE PREFIXED

**THE CONSTITUTIONS**  
OF THE  
**United States and of the State of Vermont.**

---

PUBLISHED BY ORDER OF THE LEGISLATURE.

8213



**Burlington:**  
**CHAUNCEY GOODRICH.**  
1840.



## SECTION

- 19 Robbery by a person not armed &c. how punished.  
20. Threatening to accuse or injure another, to extort money, &c. from him, how punished.  
21. Rape, how punished.  
22. Assault with intent to commit rape, how punished.

## SECTION

23. Poisoning food, drink, medicine, spring, well, &c. with intent to kill, how punished.  
24. Kidnapping &c. with intent to send person out of the state to be sold &c. how punished.

SECTION 1. Every person, who shall commit the crime of murder, shall suffer the punishment of death for the same.

SECT. 2. If any person shall wilfully and corruptly bear false testimony, with intent to take away the life of any person, and the life of such person be taken in consequence thereof, he shall suffer the punishment of death for the same.

SECT. 3. Every person, who shall, within this state, fight a duel and thereby kill any person, shall suffer the punishment of death.

SECT. 4. Every person, being an inhabitant or resident within this state, who shall, by previous appointment or engagement made within the same, fight a duel out of the jurisdiction of this state, and, in so doing, inflict a mortal wound upon any person, whereof the person so injured shall afterwards die, within this state, shall be deemed guilty of murder within this state, and may be indicted, tried and convicted in the county where such death shall happen.

SECT. 5. Every person, being an inhabitant or resident of this state, who shall, by previous appointment or engagement made within the same, be the second of either party in such duel as is mentioned in the preceding section, or shall be present as a second or surgeon, when such mortal wound shall be inflicted, whereof death shall ensue within this state, shall be punished by imprisonment in the state prison, not less than five years, or by fine, not exceeding one thousand dollars, and shall also be forever incapable of holding, or of being elected or appointed to, any place of honor, profit or trust under the constitution or laws of this state, and may be indicted, tried and convicted in the county where the death shall happen.

SECT. 6. Any person, indicted under either of the two preceding sections, may plead a former conviction or acquittal of the same offence in any other state or county, and such plea, if admitted or established, shall be a bar to all further or other proceedings against such person for the same offence within this state.

SECT. 7. Every person, who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight such duel, or shall send or deliver any written or verbal message, purporting or intending to be such challenge, although no duel ensue, shall be punished by imprisonment in the state prison, not more than ten years, or by fine, not exceeding one thousand



dollars, and shall also be forever incapable of holding, or of being elected or appointed to any place of honor, profit or trust, under the constitution or laws of this state, or of enjoying the privileges of a freeman within this state.

SECT. 8. Every person, who shall accept any such challenge, or who shall knowingly carry or deliver any such challenge or message, whether a duel ensue or not, and every person, who shall be present at the fighting of a duel with deadly weapons, as an aid or second, or surgeon, or who shall advise, encourage, or promote such duel, shall be punished by imprisonment in the state prison, not more than five years, or by fine not exceeding one thousand dollars, and shall also be incapacitated, as mentioned in the preceding section, for the term of ten years after such conviction.

SECT. 9. Every woman, who shall be privately delivered of a child, which, if born alive, would be a bastard, and such child be found dead, under such circumstances as to create a strong presumption that such child was born alive, and that it came to its death by the premeditated and wilful neglect, violence, or procurement of the mother, shall be adjudged guilty of a high misdemeanor, and be punished by imprisonment in the state prison, for a term not exceeding three years, or be fined a sum not exceeding two hundred dollars.

SECT. 10. If any woman shall be indicted for the murder of any such child, found dead under the circumstances mentioned in the preceding section, and the evidence shall not, in the opinion of the jury, be sufficient to prove the crime of murder, it shall be lawful for such jury, if the evidence be sufficient, to find her guilty of a misdemeanor, agreeably to the provisions of the preceding section, and she shall be punished as in such case provided.

SECT. 11. Every person, who shall commit the crime of manslaughter, shall be punished by imprisonment in the state prison for life, or for a term not less than seven years, or be fined not exceeding one thousand dollars.

SECT. 12. If any person shall kill another in the just and necessary defence of his own life, or the life of his wife, parent, child, brother, sister, master, mistress, or servant; or shall kill another, who is attempting to commit murder or rape, burglary, or robbery, with force or violence; or if any officer shall kill any person in suppressing any opposition against him in the just and necessary discharge of his duty, such person or officer, so causing death, shall be held guiltless.

SECT. 13. If any person, with malicious intent to maim or disfigure, shall cut out or maim the tongue, put out or destroy an eye, cut or tear off an ear, cut or slit or mutilate the nose or lip, or cut off or disable any limb or member of any other person, every person, so offending, and every person, privy to such intent, who shall be present, aiding in the commission of such offence, shall be punished



by imprisonment in the state prison for life, or for a term of years not less than seven.

SECT. 14. If any person shall assault another with intent to kill, or to maim or disfigure his person in any of the ways mentioned in the preceding section, he shall be punished by imprisonment in the state prison for a term not exceeding ten years, and be fined not exceeding one thousand dollars.

SECT. 15. If any person shall attempt to commit the crime of murder, by poisoning, drowning or strangling another person, or by any means not constituting an assault, with intent to murder, such person, so offending, shall be punished by imprisonment in the state prison, not more than ten years, or by fine not exceeding one thousand dollars.

SECT. 16. If any person shall assault another, and feloniously rob, steal and take from his person any money or other property, which may be the subject of larceny, such robber being armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed, such person, so offending, shall be punished by imprisonment in the state prison, for a term not exceeding twenty years, and be fined not exceeding one thousand dollars.

SECT. 17. If any person, being armed with a dangerous weapon, shall assault another, with intent to rob or to murder, he shall be punished by imprisonment in the state prison, not more than ten years.

SECT. 18. If any person, not being armed with a dangerous weapon, shall assault another, with force and violence, and with intent to steal or rob, he shall be punished by imprisonment in the state prison, not more than ten years.

SECT. 19. If any person shall, by force and violence, or by assault and putting in fear, feloniously rob, steal and take from the person of another, any money or other property, which may be the subject of larceny—such robber not being armed with a dangerous weapon—he shall be punished by imprisonment in the state prison, not more than ten years.

SECT. 20. If any person shall maliciously threaten to accuse another of any crime or offence, or with any injury to his person or property, with intent thereby to extort money or other pecuniary advantages whatever, or with intent to compel the person so threatened to do any act against his will, such person, so offending, shall be punished by imprisonment in the state prison not more than two years, or by fine not exceeding five hundred dollars.

SECT. 21. If any person shall ravish and carnally know any female of the age of eleven years or more, by force and against her will, or shall unlawfully and carnally know any female child, under the age of eleven years, such person shall be punished by imprisonment in the state prison for a term not exceeding ten years, and be fined a sum not exceeding one thousand dollars.

SECT. 22. If any person shall assault any female with the intent



THE  
REVISED LAWS  
OF  
VERMONT,

1880:

WITH THE PUBLIC ACTS OF 1880,

AND THE

CONSTITUTIONS OF THE UNITED STATES AND THE STATE OF VERMONT.



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Published by Authority.

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RUTLAND:  
TUTTLE & CO., OFFICIAL PRINTERS AND STATIONERS  
TO THE STATE OF VERMONT.

1881.

**With intent to rob, by one not armed.**

G. S. 112, § 25; R. S. 94, § 18; 1818, p. 8; R. 1797, p. 160, § 14.

**With intent to ravish.**

G. S. 112, § 29; 1849, No. 7, § 2; 1818, p. 7; R. 1797, p. 160, § 12; 1791, p. 22.  
25 Vt. 247. 43 Vt. 324  
32 Vt. 607.

**With intent to kill or maim.**

G. S. 112, § 18; R. S. 94, § 14.  
40 Vt. 603. 41 Vt. 564.

**With intent to kill or murder, by one armed.**

G. S. 112, § 23; 1850, No. 18, § 1; R. S. 94, § 17; 1818, p. 8; R. 1797, p. 160, § 14.  
2 Aik. 181.  
40 Vt. 603. 41 Vt. 564.

**Slung-shot.**

G. S. 112, §§ 32, 33; 1849, No. 36.

**SEC. 4116.** A person who, not being armed with a dangerous weapon, assaults another with force, and with intent to steal or rob, shall be imprisoned in the state prison not more than seven years and not less than two years.

**SEC. 4117.** A person who assaults a female person with intent to commit rape shall be punished by imprisonment in the state prison not exceeding ten years, and by fine not exceeding one thousand dollars, or either of said punishments.

**SEC. 4118.** A person who assaults another with intent to kill or to maim and disfigure his person as mentioned in section 3864 [§ 4111] shall be imprisoned in the state prison not more than ten years and fined not more than one thousand dollars.

**SEC. 4119.** A person who, armed with a dangerous weapon, assaults another with intent to kill or murder, shall be imprisoned in the state prison for life or for not less than five years.

**SEC. 4120.** A person who uses a slung-shot or similar weapon against another person or attempts so to do, or carries or is found in possession of a slung-shot or similar weapon, with intent so to use it, shall be imprisoned in the state prison not more than five years; and a person who within the state manufactures or causes to be manufactured, or sells or gives away or parts with, or offers so to do, or keeps for sale or gift, a slung-shot or similar weapon, shall be fined not more than five hundred dollars and not less than two hundred dollars or imprisoned not more than two years.

#### THREATENING.

**Threatening; black-mail.**

G. S. 112, § 27; R. S. 94, § 20.

**SEC. 4121.** A person who maliciously threatens to accuse another of a crime or offense, or with an injury to his person or property, with intent to extort money or other pecuniary advantages, or with intent to compel the person so threatened to do an act against his will, shall be imprisoned in the state prison not more than two years, or fined not more than five hundred dollars.

#### POINTING FIRE ARMS.

**Pointing or firing, without injury.**

1872, No. 30, §§ 1, 2.

**SEC. 4122.** A person who intentionally without malice, points a fire arm toward another person shall be fined not more than fifty dollars and not less than five dollars. If he discharges such fire arm so pointed without injury to another person he shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding one year, or both.

**When person injured. Damages.**

1872, No. 30, §§ 3, 4.

**SEC. 4123.** If he maims or injures another person by the discharge of such fire arm so pointed he shall be fined not less than fifty dollars or imprisoned not more than two years, and the person maimed or wounded by the discharge of such fire arm or the heirs or representatives of a person killed by such

discharge, may have an action on the case against the party offending and recover damages therefor.

SEC. 4124. The two preceding sections shall not apply where fire arms are used in self-defence, or in the discharge of official duty, or in case of justifiable homicide.

Limitation on §§ 4122, 4123.  
1872, No. 30, § 5.

## CHAPTER 190.

### ARSON AND BURNING.

#### SECTION

4125. Arson causing death.  
4126. Burning dwelling.  
4127. Setting fire to.  
4128. Other buildings.  
4129. Burning for insurance.

#### SECTION

4130. By married woman.  
4131. Burning hay, grain, &c., wood or fence.  
4132. Burning or setting woods on fire.

SEC. 4125. A person who wilfully and maliciously burns the building of another or wilfully and maliciously sets fire to a building owned in whole or in part by himself, by means of which the life of a person is lost shall suffer the punishment of death.

Arson causing death.  
G. S. 113, § 1; R. S. 95, § 1; 1818, p. 5; R. 1797, p. 157, § 6; R. 1787, p. 67.

SEC. 4126. A person who wilfully and maliciously burns the dwelling house of another or outbuilding adjoining thereto, or wilfully and maliciously burns any other building which causes the burning of such dwelling house or outbuildings, shall be imprisoned in the state prison for life or for a shorter term in the discretion of the court.

Burning dwelling.  
G. S. 113, § 2; 1855, No. 35, § 1; R. S. 95, § 2; 1818, p. 5; R. 1797, p. 157, § 7; R. 1787, p. 67.

SEC. 4127. A person who wilfully and maliciously sets fire to the dwelling house of another or outbuildings adjoining, or to any other building with the intent of burning such dwelling house and outbuilding, or wilfully and maliciously sets fire to combustible matter within or in immediate contact with such dwelling house or other building, with the intent of burning such dwelling and outbuildings, and thereby exposes the same to be burned, shall be punished as provided in the preceding section.

Setting fire to.  
G. S. 113, § 3; 1855, No. 35, § 1; 1844, No. 26.  
32 Vt. 158.

SEC. 4128. A person who wilfully and maliciously burns or, with intent to burn, sets fire to a meeting house, church, court house, town house, college, academy, jail, school house or other building erected for public use, or a bank-house, warehouse, office, store, shop, manufactory or mill, or other house or building of another not constituting a dwelling house or its outbuildings, or a vessel, cutter or boat used on a lake, river or creek in this state, or a bridge, lock, dam or flume, or wilfully and maliciously sets fire to combustible matter within or in immediate contact with such buildings, vessel, cutter, boat, bridge, lock, dam or flume, with intent of burning the same, thereby exposing the same to be burned, shall be imprisoned in the state prison not more than ten years and fined not more than one thousand dollars.

Other buildings.  
G. S. 113, §§ 2, 3; 1844, No. 26; R. S. 95, § 2; 1818, p. 5; R. 1797, p. 157, § 7.  
32 Vt. 158.



THE  
GENERAL STATUTES  
OF THE  
STATE OF VERMONT:

PASSED AT THE  
ANNUAL SESSION OF THE GENERAL ASSEMBLY,  
COMMENCING OCTOBER 9, 1862:

TOGETHER WITH  
CERTAIN OF THE PUBLIC ACTS OF THE YEAR 1862:  
TO WHICH ARE PREFIXED  
THE CONSTITUTIONS OF THE UNITED STATES AND THE STATE OF VERMONT.

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EDITED AND PUBLISHED IN PURSUANCE OF AN ACT OF THE LEGISLATURE.

SECOND EDITION.  
WITH AN APPENDIX.  
COMPRISING THE PUBLIC LAWS ENACTED SINCE THE ANNUAL SESSION OF  
1862.

*Edited and published in pursuance of an Act of the Legislature.*



PUBLISHED BY THE STATE OF VERMONT.  
1877.

a time not exceeding two days at any one time, on condition that such person pay to the selectmen for the use of such town a sum not exceeding fifty dollars, nor less than ten dollars.

SECT. 23. If any person shall have in his possession any cracker, squib, serpent, or rocket, with intent to sell or set fire to the same, or shall sell, or offer to sell or give away the same, or shall set fire to or throw any lighted cracker, squib, serpent, or rocket, he shall be punished by a fine not exceeding ten dollars.

Keeping crackers, squibs, &c., for sale or use, how punished. C. S., 110, § 23.

SECT. 24. The selectmen of the several towns in this state shall, whenever in their judgment the public good requires it, forbid any play or game upon any bowling-alley in their respective towns.

Selectmen may prohibit use of bowling-alleys. C. S., 110, § 23.

SECT. 25. Whenever the selectmen of any town shall forbid any play or game upon any bowling-alley, as mentioned in the preceding section, they shall notify the owner or keeper thereof in writing, and lodge a certificate thereof in the town clerk's office in such town, therein describing the bowling-alley, the use of which is forbidden; and the town clerk of such town shall record such certificate, and a certified copy of it under the hand of the town clerk of such town may be used as evidence in any court in this state.

Their proceedings for this purpose. Evidence. C. S., 110, §§ 24, 25.

SECT. 26. If the owner or keeper, or any person who shall thereafter become the owner or keeper of such bowling-alley, shall, after such certificate of notice is lodged in the town clerk's office as aforesaid, suffer or permit the use of such bowling-alley for any play or game, he shall forfeit and pay to the treasurer of the county wherein the offence shall be committed the sum of twenty dollars for each day or time he shall suffer or permit the same to be used as aforesaid, to be recovered by information or indictment before the county court in such county.

Use of alley after such prohibition and certificate of notice, &c., how punished. 1851, No. 33.

SECT. 27. Every justice of the peace within his own county may, upon the complaint of a town grand-juror, or state's attorney of the county, make inquiry into all breaches under sections twenty-four, twenty-five, and twenty-six of this chapter, and bind over for trial, at the county court, all offences against the same.

Justice may bind over, &c. C. S., 110, § 27.

SECT. 28. If any person or persons, within this state, shall keep or suffer to be kept upon premises owned or occupied by him or them, within fifty rods of any inhabited building of any other person, more than fifty pounds of gunpowder at any one time; or any quantity exceeding one pound, unless contained in sound canisters of tin or other metal; he or they shall forfeit, for each offence, the sum of twenty-five dollars to the treasury of the town in which such offence was committed, to be recovered in an action on the case in the name of such town; and the further sum of twenty-five dollars for each day that said gunpowder may be so kept, after notice from any inhabitant of such town to remove the same.

No person to keep more than fifty pounds of gunpowder within fifty rods of any dwelling, nor more than one pound unless in canisters. Penalty for offence. 1853, No. 35, §§ 1 & 2.

SECT. 29. If any person, without due authority from this state or the United States, shall hereafter enlist, recruit, or employ, or attempt to enlist, recruit, or employ any person in this state for military service without this state, he shall be guilty of an offence against the laws of this state, and shall be pun-

Enlistment of men without authority from this state or the United States, for service without this state, deemed by No. 23 of 1864, p. 41

## LEGISLATIVE COUNCIL

## NO. 75

September 5, 1968

Mr. George M. Blaesi, Executive Director, Legislative Council,  
Montpelier:

You requested our opinion on whether Chapter 1, Article 16 of  
the Vermont Constitution inhibits gun control legislation.

Chapter 1, Article 16 of the Vermont Constitution provides:

"That the people have a right to bear arms for the  
defense of themselves and the state — and as standing  
armies in time of peace are dangerous to liberty, they  
ought not to be kept up; and that the military should be  
kept under strict subordination to and governed by the  
civil authority."

Clearly, the constitutional right to bear arms in Vermont is a  
limited one — for the defense of themselves and the state and for  
no other purpose. The manner in which the people, as a collective  
body, are to exercise their right to bear arms for the defense of the  
state is set forth in Chapter II, section 55 of the Vermont  
Constitution authorizing a militia.

"The inhabitant of this state shall be trained and  
armed for its defense, under such regulations,  
restrictions and exceptions as congress, agreeably to the  
Constitution of the United States and the legislature of  
this state shall direct."

The people have a right to bear arms for defense of themselves,  
the legislature however is not precluded from interdicting the  
possession or ownership of firearms by felons, persons convicted  
of crimes of violence or those with mental disorders. The  
legislature may properly require the obtaining of a license or  
permit and the posting of a bond as a condition precedent to the  
purchase, carrying or possession of a weapon providing the

regulations are reasonable and not prohibitive. Legislation should not be such as to prohibit a person from possessing a weapon for the purpose of defending himself. *State v. Rosenthal*, 75 Vt. 295 (1903), concerned a Rutland City ordinance which prohibited the carrying of steel or brass knuckles, pistol, slung slot, stilleto or weapon of similar character or any weapon concealed on his person without the permission of the Mayor or Chief of Police in writing. The case holds the ordinance repugnant to the Constitution and the laws of the state because no proper standards were provided; all that was needed was permission without regard to intent or purpose. This case would not preclude the licensing of an individual or the registration of a weapon or in fact the requiring of people to make a proper showing of need to possess a weapon for the protection of themselves.

Incidentally, neither the Constitution nor the cases in Vermont confer any right to possess a weapon to protect property. *State v. Carleton*, 48 Vt. 636, held that an owner of land having the right to use reasonable force in expelling a trespasser could go prepared to defend himself and could carry a pistol if he only intended to use the pistol in defense of his own life or against the infliction of great bodily harm. One has no constitutional right to possess a weapon for the defense of his house, car, horse or cow, or in fact, for hunting purposes other than during the hunting season (Chapter II, Article 63). The people may only possess weapons for protection of themselves and the state.

We conclude, therefore, that legislation requiring the registration and licensing of owners and possessors of firearms and firearms would be inhibited by Chapter 1, Article 16 of the Vermont Constitution only insofar as such legislation must provide appropriate standards to allow the people to possess firearms for the defense of themselves.

LOUIS P. PECK, *Assistant Attorney General*.

# 1933 S.D. Sess. Laws 245-47, An Act Relating to Machine Guns, and to Make Uniform the Law with Reference Thereto, ch. 206, §§ 1-8.

**Text:**

§ 1. "machine gun" applies to and includes a weapon of any description by whatever name known, loaded or unloaded from which more than five shots or bullets may be rapidly or automatically, or semi-automatically discharged from a magazine, by a single function of the firing device. "Crime of Violence" applies to and includes any of the following crimes or an attempt to commit any of the same, namely, murder, manslaughter, kidnapping, rape, mayhem, assault to do great bodily harm, robbery, burglary, housebreaking, breaking and entering, and larceny. "Person" applied to and includes firm, partnership, association or corporation. § 2. Possession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not more than twenty years. § 3. Possession or use of a machine gun for offensive or aggressive purpose is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not more than fifteen years. § 4. Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose; (a) When the machine gun is on premises not owned or rented for bona fide permanent residence or business occupancy by the person in whose possession the machine gun may be found; or (b) when in the possession of, or used by, an unnaturalized foreign born person, who has been convicted of a crime of violence in any court of record, state or federal of the United States of America, its territories or insular possessions; or (c) when the machine gun is of the kind described in §8 and has not been registered as in said section required; or (d) when empty or loaded pistol shells of 30 or larger caliber which have been or are susceptible or use in the machine gun are found in the immediate vicinity thereof. § 5. The presence of a machine gun in any room, boat, or vehicle shall be evidence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle where the weapon is found. § 6. Exceptions. Nothing contained in this act shall prohibit or interfere with (1.) the manufacture for, and sale of, machine guns to the military forces or the peace officers of the United States or of any political subdivision thereof, or the transportation required for that purpose; (2.) The possession of a machine gun for scientific purpose, or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake; (3.) The

## REPOSITORY OF HISTORICAL GUN LAWS

## MORE

gun, the name, address, and occupation of the person to whom the machine gun was sold, loaned, given or delivered, or from whom it was received and the purpose for which it was acquired by the person to whom the machine gun was sold, loaned given or delivered, or from whom received. Upon demand every manufacturer shall permit any marshal, sheriff or police officer to inspect his entire stock of machine guns, parts and supplies therefor, and shall produce the register, herein required, for inspection. A violation of any provisions of this section shall be punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail, nfor not exceeding six months or by both such fine and imprisonment. § 8. Every machine gun now in this state adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber shall be registered in the office of the Secretary of State, on the effective date of this act, and annually thereafter. If acquired hereafter it shall be registered within 24 hours after its acquisition. Blanks for registration shall be prepared by the Secretary of STate, and furnished upon application. To comply with this section the application as filed must show the model and serial number of the gun, the name, address and occupation of the person in possession, ande from whom and the purpose for which, the gun was acquired. The registration data shall not be subject to inspection by the public. Any person failing to register any gun as required by this section shall be presumed to possess the same for offensive and aggressive purpose.

**Year:** 1933**Subject:** Dangerous or Unusual Weapons**Jurisdiction:** South Dakota

# 1934 Va. Acts 137-39, An Act to define the term "machine gun"; to declare the use and possession of a machine gun for certain purposes a crime and to prescribe the punishment therefor, ch. 96, §§ 1-7.

**Text:**

§ 1. Where used in this act; (a) "Machine gun" applies to and includes a weapon of any description by whatever name known, loaded or unloaded, from which more than seven shots or bullets may be rapidly, or automatically, or semi-automatically discharged from a magazine, by a single function of the firing device, and also applies to and includes weapons, loaded or unloaded, from which more than sixteen shots or bullets may be rapidly, automatically, semi-automatically or otherwise discharged without reloading. (b) "Crime of violence" applies to and includes any of the following crimes or an attempt to commit any of the same, namely, murder, manslaughter, kidnapping, rape, . . . § 2. Possession or use of machine gun in the perpetration or attempted perpetration of a crime of violence is hereby declared to be a crime punishable by death or by imprisonment in the State penitentiary for a term not less than twenty years. § 3. Unlawful possession or use of a machine gun for offensive or aggressive purpose is hereby declared to be a crime punishable by imprisonment in the State penitentiary for a term of not less than ten years. § 4. Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose; (a) When the machine gun is on premises not owned or rented, for bona fide permanent residence or business occupancy, by the person in whose possession the machine gun may be found; or (b) When in the possession of , or used by, an unnaturalized foreign born person, or a person who has been convicted of a crime of violence in any court of record, state or federal, of the United States of America, its territories or insular possessions; or (c) When the machine gun is of the kind described in section eight and has not been registered as in said section required; or (d) When empty or loaded pistol shells of thirty (thirty one-hundredths inch or seven and sixty-three one hundredths millimeter ) or larger caliber which have been or are susceptible to use in the machine gun are found in the immediate vicinity thereof. § 5. The presence of a machine gun in any room, boat, or vehicle shall be prima facie evidence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle where the weapon is found. § 6. (excludes military police etc. ) § 7. Every manufacturer or dealer shall keep a register of all machine guns manufactured or handled by him. This register shall show the model and serial number, date of manufacture, sale, load, gift, delivery or receipt, of every machine gun, the name, address, and occupation of the person to whom the machine gun was sold, loaned, given or delivered, or from whom it was received; and the purpose for which it was acquired by the person to whom the machine gun was sold. . .

**Year:** 1934**Subject:** Dangerous or Unusual Weapons**Jurisdiction:** Virginia

## 1931 Ill. Laws 452-53, An Act to Regulate the Sale, Possession and Transportation of Machine Guns, §§ 1-2.

**Text:**

§ 1. For purposes of this Act the term "machine gun" applies to and includes all firearms commonly known as machine rifles, machine guns and sub-machine guns of any calibre whatsoever, capable of automatically discharging more than eight cartridges successively without reloading, in which the ammunition is fed to such gun from or by means of clips, disks, belts, or other separable mechanical device. The term "manufacturer" shall apply to and include all persons dealing with machine guns as merchandise. § 2. It is unlawful for any person to sell, keep or offer for sale, loan or give away, purchase, possess, carry or transport any machine gun within this State, except that 1. Sheriffs, constables, marshals, police officers and other duly appointed peace officers may purchase, possess, carry and transport machine guns. 2. The provisions of this Act shall not apply to the Army, Navy or Marine Corps of the United States, the National Guard, and organizations authorized by law to purchase or receive machine guns from the United States, or from this State, and the members of such Corps, National Guard and organizations while on duty, may possess, carry and transport machine guns. 3. Persons, organizations or institutions possessing war relics may purchase and possess machine guns which are relics of any war in which the United States was involved, may exhibit and carry such machine guns in the parades of any military organization, and may sell, offer to sell, loan or give such machine guns to other persons, organizations or institutions possessing war relics. 4. Guards or messengers employed by common carriers, banks and trust companies, and pay-roll guards or messengers may possess and carry machine guns while actually employed in and about the shipment, transportation or delivery, or in the guarding of any money, treasure, bullion, bonds or other thing of value, and their employers may purchase or receive machine guns and keep them in their possession when such guns are not being used by such guards or messengers. 5. Manufacturers and merchants may sell, keep or offer for sale, loan or give away, purchase, possess and transport, machine guns, in the same manner as other merchandise except as hereinafter provided, and common carriers may possess and transport unloaded machine guns, as other merchandise.

**Year:** 1931**Subject:** Dangerous or Unusual Weapons**Jurisdiction:** Illinois



Section 2. That all laws or parts of laws in conflict with or inconsistent with the provision of this Act be and the same are hereby repealed.

Approved by the Governor: July 7, 1932.

A true copy:

E. A. CONWAY,  
Secretary of State.

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ACT No. 79.

House Bill No. 753.

By Mr. Bauer.

AN ACT

Authorizing the Louisiana Highway Commission, with the approval of the Governor, to sell, at public or private sale, automobile, trucks, tractors, engineering implements, road machinery, and, all other equipment owned by the Commission and not actually in use for any public purpose, or when the use to which the same was devoted, or the use for which the same was acquired, has in fact been abandoned or discontinued, and repealing all laws in conflict herewith.

Louisiana Highway Commission authorized to dispose of automobiles, trucks, tractors, etc.

Section 1. Be it enacted by the Legislature of Louisiana, That the Louisiana Highway Commission, with the approval of the Governor, is hereby authorized to sell and dispose of, at public or private sale, for such price and on such terms as it may deem best any automobiles, trucks, tractors, engineering implements, road machinery and all other equipment of whatsoever nature or kind, owned by the Commission and not actually used for any public purpose, or when the use to which the same was devoted or the use for which the same was acquired, has in fact been abandoned or discontinued.

Section 2. That all laws or parts of laws in conflict herewith be and the same are hereby repealed.

Approved by the Governor: July 7, 1932.

A true copy:

E. A. CONWAY,  
Secretary of State.

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ACT No. 80.

House Bill No. 424.

By Mr. Gilmore,  
(By request).

AN ACT

To regulate the sale, possession and transportation of machine guns, and providing a penalty for a violation hereof; providing, further, that any one who has been

convicted of murder, robbery, burglary, or assault with intent to commit a felony, who violates any of the provisions of this Act, shall be guilty of a felony and punished as provided in this Act.

Section 1. Be it enacted by the Legislature of Louisiana, "That for the purpose of this Act the term "machine gun" applies to and include all firearms commonly known as machine rifles, machine guns and sub-machine guns of any calibre whatsoever, capable of automatically discharging more than eight cartridges successively without reloading, in which the ammunition is fed to such gun from or by means of clips, disks, belts, or other separable mechanical device.

Definitions.

The term "manufacturer" shall apply to and include all persons manufacturing machine guns;

The term "merchant" shall apply to and include all persons dealing with machine guns as merchandise.

Section 2. It is unlawful for any person to sell, keep or offer for sale, loan or give away, purchase, possess, carry or transport any machine gun within this State, except that:

Prohibiting the sale and possession of machine guns.

1. Sheriffs, constables, marshals, police officers and other duly appointed peace officers may purchase, possess, carry and transport machine guns.

2. The provisions of this act shall not apply to the Army, Navy, or Marine Corps of the United States, the National Guard, and organizations authorized by law to purchase or receive machine guns from the United States, or from this State, and the members of such Corps, National Guard and organizations while on duty, may possess, carry and transport machine guns.

3. Persons, organizations or institutions possessing war relics may purchase and possess machine guns, which are relics of any war in which the United States was involved, may exhibit and carry such machine guns in the parades of any military organization, and may sell, offer to sell, loan or give such machine guns to other persons, organizations or institutions possessing war relics.

4. Guards or messengers employed by common carriers, banks and trust companies, and pay-roll guards or messengers may possess and carry machine guns while actually employed in and about the shipment, transportation or delivery, or in the guarding of any money, treasure, bullion, bonds or other thing of value and their employers may purchase or receive machine guns and keep them in their possession when such guns are not being used by such guards or messengers.

5. Manufacturers and merchants may sell, keep or offer for sale, loan or give away, purchase, possess and transport, machine guns, in the same manner as other merchandise except as hereinafter provided, and common carriers may possess and transport unloaded machine guns, as other merchandise.

In possession of  
manufacturers and  
merchants.

Section 3. No manufacturer or merchant shall permit any machine gun to pass from his possession to the possession of any person other than:

1. A manufacturer or a merchant.
2. A common carrier for shipment to a manufacturer or merchant.
3. A duly authorized agent of the government of the United States, or of this State, acting in his official capacity.

4. A person authorized to purchase a machine gun under the provisions of exceptions 1 and 4 of Section 2 of this Act.

Manufacturers or merchants shall not deliver a machine gun to any of the persons authorized to purchase such gun under the provisions of exceptions 1 and 4 of Section 2 hereof, unless such person presents a written permit to purchase and possess a machine gun, signed by the sheriff of the parish wherein such manufacturer or merchant has his place of business or delivers such machine gun. The manufacturer or merchant shall retain such permit and keep it on file in his place of business. Each sheriff shall keep a record of all such permits issued by him

Register to be kept  
by manufacturer and  
merchant.

Section 4. Every manufacturer or merchant shall keep a register of all machine guns manufactured or handled by him. This register shall show the date of the sale, loan, gift, delivery or receipt of any machine gun, the name, address and occupation of the person to whom the machine gun was sold, loaned, given or delivered, or from whom it was received, and the purpose for which the person to whom the machine gun was sold, loaned, given or delivered, purchased or obtained said machine gun.

Upon demand, every manufacturer or merchant shall permit any sheriff or deputy sheriff, or any police officer to inspect his entire stock of machine guns, parts and supplies therefor; and shall produce the register herein required and all written permits to purchase or possess a machine gun, which he has retained and filed in his place of business, for inspection by such officers.

Section 5. Any manufacturer who:

Penalty for viola-  
tion by manufacturer.

1. Passes possession of a machine gun to any person not authorized to purchase or possess such gun under the provisions hereof; or

2. Passes possession of a machine gun to a person authorized to purchase a machine gun under the provisions of exceptions 1 and 4 of Section 2 of this Act, without first receiving the written permit of a sheriff, as herein required; or

3. Fails to keep an accurate register, as provided in Section 4; or

4. Fails, or is unable to produce or account for a sheriff's permit for each machine gun sold by him for which a permit is necessary under the provisions of Section 3 hereof, shall be guilty of a felony, and upon conviction shall be punished by imprisonment in the State penitentiary at hard labor for not less than one nor more than five years.

Any person who sells, keeps or offers for sale, loans or gives away, purchases, possesses, carries or transports any machine gun within this State, except as authorized by this Act, shall be guilty of a felony, and upon conviction shall be imprisoned in the State Penitentiary, at hard labor, for not less than one nor more than ten years.

Section 6. Whoever, having been convicted of murder, robbery, burglary or assault with intent to commit a felony, thereafter violates any of the provisions of this Act, shall be guilty of a felony, and upon conviction shall be imprisoned in the State Penitentiary, at hard labor, for not less than three nor more than ten years. Penalty for committing felony.

Approved by the Governor: July 7, 1932.

A true copy:

E. A. CONWAY,  
Secretary of State.

### ACT No. 81.

House Bill No. 67.

By Mr. Stich.

### AN ACT

To provide for the payment to any Judge of the Civil District Court for the Parish of Orleans of two-thirds pay, when he shall retire from active service as a member of said Court as authorized by the provisions of Section 8 of Article VII of the Constitution of 1921, and to require the City of New Orleans to budget and appropriate such sums as may be necessary to comply with the provisions of this Act.

Section 1. Be it enacted by the Legislature of Louisiana, That whenever any Judge of the Civil District Court for the Parish of Orleans shall retire from active service as a member of said Court, as authorized by the provisions of Section 8 of Article VII of the Constitution of 1921, said Pay for retired Judges of Civil District Court for the Parish of Orleans.

# 1934 S.C. Acts 1288, An Act regulating the use and possession of Machine Guns: §§ 1 to 6.

**Text:**

§ 1. "Machine gun" defined. – Be it enacted by the General Assembly of the State of South Carolina: For the purposes of this Act the word "machine gun" applies to and includes all firearms commonly known as machine rifles, machine guns and sub-machine guns of any caliber whatsoever, capable of automatically discharging more than eight cartridges successively without reloading, in which the ammunition is fed to such gun from or by means of clips, disks, belts or other separable mechanical device. § 2. Transportation of Machine Gun. – It shall be unlawful for any person or persons in any manner to transport from one place to another in this State, or from any railroad company, or express company, or other common carrier, or any officer, agent or employee of any of them, or any other person acting in their behalf knowingly to ship or to transport from one place to another in this State in any manner or by any means whatsoever, except as hereinafter provided, any firearm as described hereinabove or commonly known as a machine gun. § 3. Storing, Keeping, and/or Possessing Machine Gun. – It shall be unlawful for any person to store, keep, possess, or have in possession, or permit another to store, keep, possess, or have in possession, except as hereinafter provided, any firearm of the type defined above or commonly known as a machine gun. § 4. Selling, Renting or Giving away Machine Gun. – It shall be unlawful for any person to sell, rent, or give away, or be interested directly or indirectly, in the sale, renting or giving away, or otherwise disposing of any firearm of the type above described or commonly known as a machine gun. § 5. Exceptions – Register Machine Guns. – The provisions of this Act shall not apply to the army, navy or marine corps of the United States, the National Guard, and organizations authorized by law to purchase or receive machine guns from the United States, or from this State, and the members of such corps. National Guard and organizations while on duty or at drill, may possess, carry and transport machine guns, and, Provided, further, That any peace officer of the State, counties or political sub-division thereof. State Constable, member of the Highway patrol, railway policemen, warden, superintendents, headkeeper or deputy of any State prison, penitentiary, workhouse, county jail, city jail, or other institution for detention of persons convicted or accused of crime, or held as witnesses in criminal cases, or persons on duty in the postal service of the United States, or common carrier while transporting direct to any police department, military or naval organization, or persons authorized by law to possess or use a machine gun, may possess machine guns when required in the performance of their duties, nor shall the provisions of this Act be construed to apply to machine guns kept for display as relics and which are rendered harmless and not useable. Within thirty days after the passage of this Act every

## REPOSITORY OF HISTORICAL GUN LAWS

## MORE

Sheriff of the county in which the applicant resides or has its principal place of business, which shall include the applicants name, residence and business address, description including sex, race, age weight, height, color of eyes, color of hair, whether or not ever charged or convicted of any crime, municipal, State or otherwise, and where, if so charged, and when same was disposed of. The applicant shall also give the description including the serial number and make the machine gun which he possesses or desires to possess. Thereupon the Secretary of State shall file such application in his office, registering such applicant together with the information required in the application in a book or index to be kept for that purpose, and assign to him a number, and issue to him a card which shall bear the signature of the applicant, and which he shall keep with him while he has such machine gun in his possession. Such registration shall be made on the date application is received and filed with the Secretary of State, and shall expire on December 31, of the year in which said license is issued. § 6. Penalty – Any person violating any of the provisions of this Act shall be guilty of a felony, and, on conviction thereof shall be sentenced to pay a fine not exceeding One Thousand Dollars, and undergo imprisonment by separate or solitary confinement at labor not exceeding twenty (20) years.

**Year:** 1934 **Subject:** Dangerous or Unusual Weapons **Jurisdiction:** South Carolina

## Chapter 47. Dangerous Articles

### § 47-5. Firearms, shotguns, rifles and other dangerous weapons.

[Amended 9-11-1951; 1-11-1955; 5-10-1960; 1-27-1970 by Ord. No. 70-36; 5-28-1974 by Ord. No. 74-180; 5-27-1986 by Ord. No. 86-163; 3-16-1993 by Ord. No. 93-62]

- A. Purpose and intent. The Council finds that violent crime is a serious problem in the City and firearms and other dangerous weapons are frequently used in the commission of crimes, particularly homicides and assaults. The possession of such weapons also often leads to accidental deaths and injuries. The possession and use of assault weapons and ammunition feeding devices for criminal purposes is increasing and poses a serious danger to public safety. The use of weapons by persons under the influence of drugs and/or alcohol can readily lead to serious injury or death. The possession of weapons in public facilities and places also poses a serious danger to public safety. The possession of toy or imitation weapons which substantially duplicate actual weapons poses a danger to the person possessing the weapon and to others. In order to promote and protect the health, safety and welfare of the public, the Council finds it necessary to place restrictions upon the possession and use of such weapons. The restrictions imposed by this section are intended to be in addition to restrictions found in state law and are not intended to conflict with state law provisions.
- B. As used in this section, the following terms shall have the meanings indicated:

#### **AIR GUN**

Any pistol, revolver, rifle or shotgun which fires projectiles by means of a spring or compressed air or other gas, instead of an explosive.

[Amended 12-15-2009 by Ord. No. 2009-410<sup>[2]</sup>]

#### **AMMUNITION**

Explosives suitable to be fired from a firearm, machine gun, pistol, revolver, rifle, shotgun, assault weapon or other dangerous weapon.

#### **AMMUNITION FEEDING DEVICE**

Magazines, belts, feedstrips, drums or clips capable of being attached to or utilized with any center-fire rifle, shotgun or pistol which employs the force of the expanding gases from a discharging cartridge to chamber a fresh round after each single pull of the trigger which, in the case of a rifle or shotgun holds in excess of five cartridges, or in the case of a pistol holds in excess of 17 cartridges.

#### **ASSAULT WEAPON**

- (1) Any center-fire rifle or shotgun which employs the force of the expanding gases from a discharging cartridge to chamber a fresh round after each single pull of the trigger, and which is loaded or capable of being loaded with a combination of more than six cartridges in the ammunition feeding device and chamber combined. For the purposes of this section, a weapon is capable of being loaded if it is possessed by one who, at the same time, possesses:
- (a) In the case of a rifle, a fixed or detachable ammunition feeding device which is attached to or utilized with or capable of being attached to or utilized with such rifle and which has a capacity of more than five cartridges; or

- (b) In the case of a shotgun, an ammunition feeding device which is attached to or utilized with or capable of being attached to or utilized with such shotgun and which has a capacity of more than five cartridges.
- (2) A center-fire rifle or shotgun which employs the force of expanding gases from a discharging cartridge to chamber a fresh round after each single pull of the trigger, and which has:
  - (a) A flash suppressor attached to the weapon reducing muzzle flash;
  - (b) A grenade launcher;
  - (c) A sighting device making a target visible at night;
  - (d) A barrel jacket surrounding all or a portion of the barrel to dissipate heat therefrom; or
  - (e) A multi-burst trigger activator.
- (3) Any stockless pistol grip shotgun.
- (4) The following weapons manufactured prior to the effective date of this section. [NOTE: This section was found unconstitutional by the Honorable Charles J. Siragusa, Supreme Court Justice, Monroe County, in Citizens for a Safer Community v. City of Rochester, Index No. 93-08421.]
- (5) For purposes of this section, the term "assault weapon" shall not include any of the following:
  - (a) Any weapon which has been modified to render it permanently inoperable or permanently make it a device no longer defined as an "assault weapon";
  - (b) Weapons that do not use cartridges or shells;
  - (c) Manually operated bolt-action weapons, lever-action weapons, slide-action weapons or single-shot weapons;
  - (d) Multiple-barrel weapons, revolving-cylinder weapons except shotguns, weapons that use exclusively a rotary Mannlicher-style magazine; or
  - (e) Any antique firearm as defined in § 265.00 of the New York State Penal Law or any curio or relic as defined under United States law which is possessed by a licensed collector in accordance with United States Law.

#### **DISPOSE OF**

To dispose of, give away, give, lease, loan, keep for sale, offer, offer for sale, sell, transfer or otherwise dispose of.

#### **DRUG**

Any substance listed in § 3306 of the Public Health Law of the State of New York.

#### **DWELLING**

As defined in Chapter 120 of the Municipal Code, Zoning Code.  
[Amended 11-19-2002 by Ord. No. 2002-354]

#### **FIREARM**

Any pistol or revolver; or a shotgun having one or more barrels less than 18 inches in length or any weapon made from a shotgun (whether by alteration, modification or otherwise) if such weapon as modified has an overall length of less than 26 inches; or a rifle having one or more barrels less than 16 inches in length or any weapon made from a rifle (whether by alteration, modification or otherwise) if such weapon as modified has an overall length of less than 26 inches. For purposes of this definition, the length of the barrel on a shotgun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech or breechlock when closed and when the shotgun or rifle is



cocked; the overall length of a weapon made from a shotgun or rifle is the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore. Such definition, except as otherwise indicated, shall include both loaded and unloaded firearms, except that it shall not include any antique firearm as defined in federal or New York State law or any curio or relic as defined under United States law which is possessed by a licensed collector in accordance with United States law.

#### **PARK**

As defined in § 79-1 of the Municipal Code.

#### **POSSESS**

Have physical possession or otherwise to exercise dominion or control over. The presence in an automobile of any firearm, rifle or shotgun which is openly visible is presumptive evidence of its possession by all persons occupying such automobile at the time such firearm, rifle or shotgun is found, except if such firearm, rifle or shotgun is found in a vehicle for hire.

#### **PUBLIC FACILITY**

Any building or facility owned, leased, operated or controlled by or on behalf of any government, municipality or public authority or corporation within the boundaries of the City, except buildings or facilities used for educational purposes.

#### **PUBLIC PLACE**

Any street, including the sidewalk portion thereof, park, playground, recreation area, cemetery or lot owned, leased, operated or controlled by or on behalf of any government, municipality or public authority or corporation within the boundaries of the City, which is generally accessible to the public, except grounds used for educational purposes.

#### **RIFLE**

A weapon designed or redesigned, made or remade and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

#### **SHOTGUN**

A weapon designed or redesigned, made or remade and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

[2] *Editor's Note: This ordinance provided an effective date of 1-11-2010.*

- C. No person shall possess a loaded or unloaded firearm, rifle, shotgun or air gun, or a dagger, dangerous knife, dirk, razor or stiletto, in a public place or public facility in the City. This prohibition shall not apply to:
- (1) A police officer or peace officer authorized to possess the same;
  - (2) A government employee or licensed security guard authorized or required by employment or office to possess the same while acting within the scope of such employment;
  - (3) A person in the military service of the State of New York or the United States when duly authorized to possess the same;
  - (4) A person transporting a rifle or shotgun in a motor vehicle in the City in accordance with the provisions of § 11-0931, Subdivision 2, of the New York State Environmental Conservation Law, or otherwise transporting an unloaded rifle, shotgun or air gun in the City, provided that the same is completely enclosed or contained in a nontransparent carrying case and either:
    - (a) Said carrying case is locked; or

- (b) A locking device is attached to the weapon and locked in a manner so as to prevent the weapon from being fired;
  - (5) An authorized person who, for the purpose of shooting practice, possesses a weapon at an established target range in a public place other than a park or public facility;
  - (6) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law; or
  - (7) Possession of a firearm by a person licensed to carry a firearm pursuant to § 400.00 of the Penal Law or possession or transportation by a gunsmith or dealer in firearms in accordance with a license issued by the State of New York or the United States, except that this subsection shall not apply in a park or a public facility other than a parking garage.
- D. No person shall store a firearm, rifle, shotgun or air gun in a dwelling in the City unless said firearm, rifle, shotgun or air gun is completely enclosed or contained in a nontransparent locked carrying case or in a locked gun rack, cabinet, closet or safe, or a locking device is attached to the weapon and locked in a manner so as to prevent the weapon from being fired. This requirement shall not apply to a rifle, shotgun or licensed firearm carried on the body of the owner or within such close proximity of the owner that the owner can retrieve it as quickly and easily as if it were carried on the owner's body.
- E. No person shall dispose of any firearm, rifle, shotgun, air gun or ammunition in the City. This prohibition shall not apply to:
- (1) A gunsmith or dealer in firearms duly licensed by the State of New York or the United States;
  - (2) A person disposing of the same to a gunsmith or dealer in firearms duly licensed by the State of New York or the United States;
  - (3) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law;
  - (4) A person disposing of a licensed firearm in accordance with law;
  - (5) Disposition by intestate or testamentary bequest; or
  - (6) A person disposing of a rifle, shotgun, air gun or ammunition to a family member.
- F. No person shall possess an assault weapon or an ammunition feeding device in the City. This prohibition shall not apply to:
- (1) A police officer or peace officer authorized to possess the same;
  - (2) A person in the military service of the State of New York or the United States when duly authorized to possess the same;
  - (3) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law; or
  - (4) A gunsmith or dealer in firearms duly licensed by the State of New York or the United States for weapons to be used by police officers or persons in the military service or for delivery outside of the City.
- G. No person shall dispose of an assault weapon or ammunition feeding device in the City. This prohibition shall not apply to:
- (1) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law; or

- (2) A gunsmith or dealer in firearms duly licensed by the State of New York or the United States for weapons to be used by police officers or persons in the military service or for delivery outside of the City.
- H. No person shall carry a firearm, shotgun, rifle or air gun in the City while such person has 1/10 of 1% or more by weight of alcohol in the person's blood as shown by chemical analysis of the person's blood, breath, urine or saliva.
- I. No person shall carry a firearm, shotgun, rifle or air gun in the City while in an intoxicated condition.
- J. No person shall carry a firearm, shotgun, rifle or air gun in the City while the person's ability to safely carry such weapon is impaired by the use of a drug.
- K. Any person who carries a firearm, shotgun, rifle or air gun in this City shall be deemed to have given consent to a breath test and a chemical test of the person's breath, blood, urine or saliva for the purpose of determining the alcoholic or drug content of the person's blood, provided that any test is administered at the direction of a police officer having reasonable grounds therefor. A chemical test must be administered within two hours after such person has been placed under arrest for a violation of this section or any other law or ordinance involving the use or possession of a firearm, rifle, shotgun or air gun, or within two hours after a breath test indicates that alcohol has been consumed by such person. Upon the trial of any action arising out of an arrest for a violation of Subsection H, I or J of this section, the court shall admit evidence of the amount of alcohol or drugs in the blood of the person carrying the firearm, shotgun, rifle or air gun as shown by a test administered pursuant to this section. Evidence of a refusal to submit to a chemical test shall be admissible in any trial, proceeding or hearing based upon a violation of such subsections, but only upon a showing that the person was given sufficient warning, in clear and unequivocal language, of the effect of such refusal and the person persisted in such refusal.
- L. [NOTE: Some provisions of this section were found unconstitutional by the Honorable Charles J. Siragusa, Supreme Court Justice, Monroe County, in Citizens for a Safer Community v. City of Rochester, Index No. 93-08421.]
- M. Discharge of weapons; permits.
- (1) No person shall discharge an air gun, shotgun, rifle, assault weapon, machine gun, submachine gun or a firearm of any kind or description in the City, except police officers, peace officers, members of the military and persons holding permits as in this subsection provided.
- (2) The Chief of Police is hereby authorized to grant permits for the discharge of shotguns at clay pigeons at any particular location or for the discharge of weapons at target ranges subject to such restrictions and conditions as the Chief may deem necessary. Any person holding such a permit shall obey all the restrictions and conditions contained herein.
- N. The owner of a firearm, shotgun, rifle, assault weapon, machine gun or submachine gun, which becomes lost or stolen, shall report the loss or theft to the Rochester Police Department within 24 hours after the loss or theft is discovered or reasonably should be discovered. The owner of such a weapon shall store the weapon in a safe and secure manner as required in Subsection D of this section and shall check such weapon at least once each week, or immediately upon returning to the City if the owner is absent from the City for more than one week. Failure to perform such a check shall not be a defense to a prosecution for a violation of this subsection.
- [Added 9-15-1998 by Ord. No. 98-345<sup>[3]</sup>]
- [3] *Editor's Note: This ordinance also relettered former Subsections N and O as Subsections O and P.*
- O. Notwithstanding the penalties contained in § 47-8, a violation of any provision of this section shall be punishable by a fine not to exceed \$1,000 or by imprisonment not to exceed 180 days, or by both such fine and imprisonment.
- P. The provisions of this section are severable, and if any of its provisions shall be held unconstitutional or invalid, the decision of the court shall not affect or impair any of the remaining provisions of the same. It is

hereby declared to be the intention of the Council that this section would have been adopted had such unconstitutional or invalid provision not been included herein. If any term or provision of this section shall be declared unconstitutional, invalid or ineffective in whole, or in part, by a court of competent jurisdiction, then to the extent that it is not constitutional, invalid or ineffective, such term or provision shall be in force and effect, nor shall such determination be deemed to invalidate the remaining terms or provisions thereof.

[1] *Editor's Note: For additional provisions relating to firearms, see Ch. 43, Cemeteries, § 43-11, and Ch. 79, Parks, § 79-5.*

## Municipal Code of Chicago

**8-20-010 Definitions.**

For purposes of this chapter the following terms shall apply:

“The Act” means the Illinois Firearm Owners Identification Card Act, 430 ILCS 65/1 et seq., as amended.

“Ammunition” means any self-contained cartridge or shotgun shell, by whatever name known, which is designed to be used or adaptable to use in a firearm; excluding however:

(1) any ammunition used exclusively for line-throwing, signaling, or safety and required or recommended by the United States Coast Guard or Interstate Commerce Commission; or

(2) any ammunition designed exclusively for use with a stud or rivet driver or other similar industrial ammunition.

“Antique firearm” has the same meaning ascribed to that term in 18 U.S.C. § 921(a)(16).

“Assault weapon” means any of the following, regardless of the caliber of ammunition accepted:

(a) (1) A semiautomatic rifle that has the ability to accept a detachable magazine and has one or more of the following:

(A) a folding, telescoping or detachable stock;

(B) a handgun grip;

(C) a forward grip;

(D) a threaded barrel;

(E) a grenade, flare or rocket launcher; or

(F) a barrel shroud.

(2) A semiautomatic rifle that has a fixed magazine with the capacity to accept more than 10 rounds, except for an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

(3) A semiautomatic version of an automatic rifle.

(4) Any part, combination of parts, component, device, attachment, or accessory, including but not limited to a bump stock, that is designed or functions to accelerate the rate of fire of a semiautomatic rifle but not convert the semiautomatic rifle into a machine gun.

(5) A semiautomatic shotgun that has one or more of the following:

(A) a folding, telescoping or detachable stock;

(B) a handgun grip;

(C) a fixed magazine with the capacity to accept more than 5 rounds;

(D) a forward grip; or

(E) a grenade, flare or rocket launcher.

(6) A semiautomatic handgun that has the ability to accept a detachable magazine and has one or more of the following:

- (A) the capacity to accept a detachable magazine at some location outside of the handgun grip;
  - (B) a threaded barrel;
  - (C) a barrel shroud; or
  - (D) a second handgun grip.
- (7) A semiautomatic version of an automatic handgun.
- (8) A semiautomatic handgun with a fixed magazine that has the capacity to accept more than 15 rounds.
- (9) A machine gun.
- (10) All of the following rifles, including any copies or duplicates thereof with the capability of any such weapon:
- (A) All AK types, including the following:
    - (i) AK, AK47, AK47S, AK-74, AKM, AKS, ARM, MAK90, MISR, NHM90, NHM91, Rock River Arms LAR-47, SA85, SA93, Vector Arms AK-47, VEPR, WASR-10, and WUM
    - (ii) IZHMAASH Saiga AK
    - (iii) MAADI AK47 and ARM
    - (iv) Norinco 56S, 56S2, 84S, and 86S
    - (v) Poly Technologies AK47 and AKS.
  - (B) All AR types, including the following:
    - (i) AR-10
    - (ii) AR-15
    - (iii) Armalite M15 22LR Carbine
    - (iv) Armalite M15-T
    - (v) Barrett REC7
    - (vi) Beretta AR-70
    - (vii) Bushmaster ACR
    - (viii) Bushmaster Carbon 15
    - (ix) Bushmaster MOE series
    - (x) Bushmaster XM15
    - (xi) Colt Match Target Rifles
    - (xii) DoubleStar AR rifles
    - (xiii) DPMS Tactical Rifles
    - (xiv) Heckler & Koch MR556
    - (xv) Olympic Arms
    - (xvi) Remington R-15 rifles

- (xvii) Rock River Arms LAR-15
- (xviii) Sig Sauer SIG516 rifles
- (xix) Smith & Wesson M&P15 rifles
- (xx) Stag Arms AR rifles
- (xxi) Sturm, Ruger & Co. SR556 rifles.
- (C) Barrett M107A1.
- (D) Barrett M82A1.
- (E) Beretta CX4 Storm.
- (F) Calico Liberty Series.
- (G) CETME Sporter.
- (H) Daewoo K-1. K-2, Max 1, Max 2, AR 100. and AR 110PC.
- (I) Fabrique Nationale/FN Herstal FAL, LAR, 22 FNC, 308 Match, L1A1 Sporter, PS90, SCAR, and FS2000.
- (J) Feather Industries AT-9.
- (K) Galil Model AR and Model ARM.
- (L) Hi-Point Carbine.
- (M) HK-91, HK-93, HK-94, HK-PSG-1, and HK USC.
- (N) Kel-Tec Sub-2000, SU-16, and RFB.
- (O) SIG AMT, SIG PE-57, Sig Sauer SG 550, and Sig Sauer SG 551.
- (P) Springfield Armory SAR-48.
- (Q) Steyr AUG.
- (R) Sturm, Ruger Mini-14 Tactical Rifle M-14/20CF.
- (S) All Thompson rifles, including the following:
  - (i) Thompson M1SB
  - (ii) Thompson T1100D
  - (iii) Thompson T150D
  - (iv) Thompson T1B
  - (v) Thompson T1B100D
  - (vi) Thompson T1B50D
  - (vii) Thompson T1BSB
  - (viii) Thompson T1-C
  - (ix) Thompson T1D
  - (x) Thompson T1SB

(xi) Thompson T5

(xii) Thompson T5100D

(xiii) Thompson TM1

(xiv) Thompson TM1C.

(T) UMAREX UZI Rifle.

(U) UZI Mini Carbine, UZI Model A Carbine, and UZI Model B Carbine.

(V) Valmet M62S, M71S, and M78.

(W) Vector Arms UZI Type.

(X) Weaver Arms Nighthawk.

(Y) Wilkinson Arms Linda Carbine.

(11) All of the following handguns, including any copies or duplicates thereof with the capability of any such weapon:

(A) All AK-47 types, including the following:

(i) Centurion 39 AK handgun

(ii) Draco AK-47 handgun

(iii) HCR AK-47 handgun

(iv) IO, Inc. Hellpup AK-47 handgun

(v) Krinkov handgun

(vi) Mini Draco AK-47 handgun

(vii) Yugo Krebs Krink handgun.

(B) All AR-15 types, including the following:

(i) American Spirit AR-15 handgun

(ii) Bushmaster Carbon 15 handgun

(iii) DoubleStar Corporation AR handgun

(iv) DPMS AR-15 handgun

(v) Olympic Arms AR-15 handgun

(vi) Rock River Arms LAR 15 handgun.

(C) Calico Liberty handguns.

(D) PSA SA58 PKP FAL handgun.

(E) Encom MP-9 and MP-45.

(F) Heckler & Koch model SP-89 handgun.

(G) Intratec AB-10, TEC-22 Scorpion, TEC-9, and TEC-DC9.

(H) Kel-Tec PLR 16 handgun.



(I) The following MAC types:

(i) MAC-10

(ii) MAC-11

(iii) Masterpiece Arms MPA A930 Mini Pistol, MPA460 Pistol, MPA Tactical Pistol, and MPA Mini Tactical Pistol

(iv) Military Armament Corp. Ingram M-11

(v) Velocity Arms VMAC.

(J) Sig Sauer P556 handgun.

(K) Sites Spectre.

(L) All Thompson types, including the following:

(i) Thompson TA510D

(ii) Thompson TA5.

(M) All UZI types, including Micro-UZI.

(12) All of the following shotguns, including any copies or duplicates thereof with the capability of any such weapon:

(A) Franchi LAW-12 and SPAS 12.

(B) All IZHMAASH Saiga 12 types, including the following:

(i) IZHMAASH Saiga 12

(ii) IZHMAASH Saiga 12S

(iii) IZHMAASH Saiga 12S EXP-01

(iv) IZHMAASH Saiga 12K

(v) IZHMAASH Saiga 12K-030

(vi) IZHMAASH Saiga 12K-040 Taktika.

(C) Streetsweeper.

(D) Striker 12.

(13) All belt-fed semiautomatic firearms, including TNW M2HB.

(14) Any combination of parts from which a firearm described in subparagraphs (1) through (13) can be assembled.

(15) The frame or receiver of a rifle or shotgun described in subparagraph (1), (2), (5), (9), (10), (12), (13), or (18).

(16) A sawed-off shotgun.

(17) A short-barrel rifle.

(18) A .50 caliber rifle.

(b) An “assault weapon” shall not include any firearm that:

(1) is manually operated by bolt, pump, lever, or slide action:

(2) has been rendered permanently inoperable. “Permanently inoperable” means a firearm which is incapable of discharging a projectile by means of an explosive and incapable of being restored to a firing condition; or

(3) is an antique firearm.

(c) For purposes of this definition of “assault weapon” the following terms apply:

(1) “barrel shroud” means a shroud that is attached to, or partially or completely encircles, the barrel of a firearm so that the shroud protects the user of the firearm from heat generated by the barrel. The term does not include (i) a slide that partially or completely encloses the barrel; or (ii) an extension of the stock along the bottom of the barrel which does not completely or substantially encircle the barrel.

(2) “detachable magazine” means an ammunition feeding device that can be removed from a firearm without disassembly of the firearm action.

(3) “fixed magazine” means an ammunition feeding device that is permanently fixed to the firearm in such a manner that it cannot be removed without disassembly of the firearm.

(4) “folding, telescoping, or detachable stock” means a stock that folds, telescopes, detaches or otherwise operates to reduce the length, size, or any other dimension, or otherwise to enhance the concealability, of a firearm.

(5) “forward grip” means a grip located forward of the trigger that functions as a handgun grip.

(6) “rocket” means any simple or complex tubelike device containing combustibles that on being ignited liberate gases whose action propels the device through the air and has a propellant charge of not more than 4 ounces.

(7) “grenade, flare or rocket launcher” means an attachment for use on a firearm that is designed to propel a grenade, flare, rocket, or other similar device.

(8) “handgun grip” means a grip, a thumbhole stock, or any other part, feature or characteristic that can function as a grip.

(9) “threaded barrel” means a feature or characteristic that is designed to allow for the attachment of a device such as a firearm silencer or a flash suppressor.

(10) “belt-fed semiautomatic firearm” means any repeating firearm that:

(i) utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round;

(ii) requires a separate pull of the trigger to fire each cartridge; and

(iii) has the capacity to accept a belt ammunition feeding device.

(11) “.50 caliber rifle” means a centerfire rifle capable of firing a .50 caliber cartridge. The term does not include any antique firearm, any shotgun including a shotgun that has a rifle barrel, or any muzzle-loader which uses black powder for hunting or historical re-enactments.

(12) “.50 caliber cartridge” means a fixed cartridge in .50 BMG caliber, either by designation or actual measurement, that is capable of being fired from a centerfire rifle. “.50 caliber cartridge” does not include any memorabilia or display item that is filled with a permanent inert substance or that is otherwise permanently altered in a manner that prevents ready modification for use as live ammunition or shotgun ammunition with a caliber measurement that is equal to or greater than .50 caliber.

“Corrections officer” means wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of an offense.

“Department” means the department of police.

“Duty-related firearm” shall mean any firearm which is authorized by any law enforcement agency or employer to be utilized by their personnel in the performance of their official duties.

“Firearm” means any device, by whatever name known, which is designed or restored to expel a projectile or projectiles by the action of any explosive, expansion of gas or escape of gas. Provided, that such term shall not include:

(1) any pneumatic gun, spring gun, paint ball gun or B-B gun which either expels a single globular projectile not exceeding .18 inch in diameter and which has a maximum muzzle velocity of less than 700 feet per second or breakable paint balls containing washable marking colors;

(2) any device used exclusively for line- throwing, signaling, or safety and required or recommended by the United States Coast Guard or Interstate Commerce Commission; or

(3) any device used exclusively for firing explosives, rivets, stud cartridges, or any similar industrial ammunition.

“Firearm case” means any firearm case, carrying box, shipping box or other similar container that is designed for the safe transportation of the firearm.

“FOID” means the Firearm Owner's Identification Card issued pursuant to the Act.

“High capacity magazine” means a magazine, belt, drum, feed strip, or similar device, including any such device joined or coupled with another in any manner, that has an overall capacity of more than 15 rounds of ammunition. A “high capacity magazine” does not include an attached tubular device to accept, and capable of operating only with, .22 caliber rimfire ammunition.

“Laser sight accessory” means a laser sighting device which is either integrated into a firearm or capable of being attached to a firearm.

“Licensed shooting range facility” means a shooting range facility that is duly licensed pursuant to Chapter 4-151.

“Licensee of a licensed shooting range facility” or “licensee” means any person issued a shooting range facility license under Chapter 4-151.

“Machine gun” means any firearm which can fire multiple rounds of ammunition by a single function of the firing device or one press of the trigger.

“Peace officer” means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses.

“Sawed-off shotgun” means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun, whether by alteration, modification or otherwise, if such weapon, as modified, has an overall length of less than 26 inches.

“Short-barreled rifle” means a rifle having one or more barrels less than 16 inches in length, and any weapon made from a rifle, whether by alteration, modification, or otherwise, if such weapon, as modified, has an overall length of less than 26 inches.

“Superintendent” means the superintendent of the department or his designated representative.

“Safety mechanism” means a design adaption or nondetachable accessory that lessens the likelihood of unanticipated use of the handgun.

“Trigger lock” means a device that when locked in place by means of a key, prevents a potential user from pulling the trigger of the firearm without first removing the trigger lock by use of the trigger lock's key.

“Manager”, “Employee”, “Range Master”, “CCL”, “Shooting range patron” and “Shooting range facility” have the meaning ascribed to those terms in Section 4-151-010.

(Added Coun. J. 7-2-10, p. 96234, § 4; Amend Coun. J. 7-6-11, p. 3073, § 4; Amend Coun. J. 1-17-13, p. 45370, § 4; Amend Coun. J. 7-17-13, p. 57262, § 1; Amend Coun. J. 9-11-13, p. 59869, § 3; Amend Coun. J. 3-28-18, p. 73485, § 1)

#### **8-20-085 High capacity magazines and certain tubular magazine extensions – Sale and possession prohibited – Exceptions.**

(a) It is unlawful for any person to carry, possess, sell, offer or display for sale, or otherwise transfer any high capacity magazine or tubular magazine extension for a shotgun. This section shall not apply to corrections officers, members of the armed forces of the United States, or the organized militia of this or any other state, and peace officers, to the extent that any such person is otherwise authorized to acquire or possess a high capacity magazine or tubular magazine extension for a shotgun, and is acting within the scope of his duties, or to any person while in the manufacturing, transportation or sale of high capacity magazines or tubular magazine extension for a shotgun to people authorized to possess them under this section.

(b) Any high capacity magazine or tubular magazine extension for a shotgun carried, possessed, displayed, sold or otherwise transferred in violation of this section is hereby declared to be contraband and shall be seized by and forfeited to the city.

(Added Coun. J. 7-2-10, p. 96234, § 4; Amend Coun. J. 7-17-13, p. 57262, § 1)

## Sunnyvale Municipal Code

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[Title 9. PUBLIC PEACE, SAFETY OR WELFARE](#)  
[Chapter 9.44. FIREARMS](#)

**9.44.050. Possession of large-capacity ammunition magazines prohibited.**

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(a) No person may possess a large-capacity magazine in the city of Sunnyvale whether assembled or disassembled. For purposes of this section, “large-capacity magazine” means any detachable ammunition feeding device with the capacity to accept more than ten (10) rounds, but shall not be construed to include any of the following:

- (1) A feeding device that has been permanently altered so that it cannot accommodate more than ten (10) rounds; or
- (2) A .22 caliber tubular ammunition feeding device; or
- (3) A tubular magazine that is contained in a lever-action firearm.

(b) Any person who, prior to the effective date of this section, was legally in possession of a large-capacity magazine shall have ninety (90) days from such effective date to do either of the following without being subject to prosecution:

- (1) Remove the large-capacity magazine from the city of Sunnyvale; or
- (2) Surrender the large-capacity magazine to the Sunnyvale Department of Public Safety for destruction; or
- (3) Lawfully sell or transfer the large-capacity magazine in accordance with [Penal Code](#) Section 12020.

(c) This section shall not apply to the following:

- (1) Any federal, state, county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties;
- (2) Any government officer, agent, or employee, member of the armed forces of the United States, or peace officer, to the extent that such person is otherwise authorized to possess a large-capacity magazine and does so while acting within the course and scope of his or her duties;
- (3) A forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her duties;
- (4) Any entity that operates an armored vehicle business pursuant to the laws of the state, and an authorized employee of such entity, while in the course and scope of his or her employment for purposes that pertain to the entity’s armored vehicle business;
- (5) Any person who has been issued a license or permit by the California Department of Justice pursuant to [Penal Code](#) Sections 18900, 26500-26915, 31000, 32315, 32650, 32700-32720, or 33300, when the possession of a large-capacity magazine is in accordance with that license or permit;
- (6) A licensed gunsmith for purposes of maintenance, repair or modification of the large-capacity magazine;
- (7) Any person who finds a large-capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possesses the large-capacity magazine no longer than is reasonably necessary to deliver or transport the same to a law enforcement agency;

(8) Any person lawfully in possession of a firearm that the person obtained prior to January 1, 2000, if no magazine that holds fewer than 10 rounds of ammunition is compatible with the firearm and the person possesses the large-capacity magazine solely for use with that firearm.

(9) Any retired peace officer holding a valid, current Carry Concealed Weapons (CCW) permit issued pursuant to California [Penal Code](#). (Ord. 3027-13 § 1).

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## Los Angeles Municipal Code

**SEC. 46.30. LARGE-CAPACITY MAGAZINES – POSSESSION PROHIBITED.****(a) Definitions.**

(1) "**LARGE-CAPACITY MAGAZINE**" means any detachable ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:

- (i) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.
- (ii) A .22 caliber tube ammunition feeding device.
- (iii) A tubular magazine that is contained in a lever-action firearm.

**(b) Prohibition on Possession of Large-Capacity Magazines.**

(1) It is unlawful for any person to possess any large-capacity magazine, except as otherwise authorized by law, whether assembled or disassembled.

(2) Any person who, prior to the effective date of this article, was legally in possession of a large-capacity magazine shall have 60 days from such effective date to do any of the following without being subject to prosecution:

- (i) Remove the large-capacity magazine from the City of Los Angeles;
- (ii) Surrender the large-capacity magazine to the Los Angeles Police Department for destruction;
- (iii) Sell or transfer the large-capacity magazine lawfully in accordance with Section 32410 of the California Penal Code.

**(c) Exemptions.** The provisions of Subsection (b) shall not apply to the following:

(1) Any government officer, agent, or employee, member of the armed forces of the United States, or peace officer, to the extent that such person is otherwise authorized by his or her respective federal, state, county, or city law enforcement or military agency to possess a large-capacity magazine for use in accordance with the law enforcement policy of the agency; **(Amended by Ord. No. 184,007, Eff. 1/26/16.)**

(2) A person licensed pursuant to Sections 26700 to 26915 of the California Penal Code;

(3) A gunsmith for the purpose of maintenance, repair or modification of the large-capacity magazine;

(4) Any entity that operates an armored vehicle business pursuant to the laws of the state, and an authorized employee of such entity, while in the course and scope of his or her employment for purposes that pertain to the entity's armored vehicle business;

- (5) Any person, corporation or other entity that manufactures the large-capacity magazine for a person mentioned in Subdivision (1), or for export pursuant to applicable federal regulations;
- (6) Any person using the large-capacity magazine solely as a prop for a motion picture, television or video production;
- (7) Any holder of a special weapons permit issued pursuant to California Penal Code Sections 18900, 31000, 32650, 32700-32720, or 33300;
- (8) Any person issued a permit pursuant to California Penal Code Section 32315 by the Department of Justice upon a showing of good cause for the possession, transportation or sale of large-capacity magazines between a person licensed pursuant to Sections 26700 to 26915 of the California Penal Code, and an out-of-state client, when those activities are in accordance with the terms and conditions of the permit;
- (9) Any federal, state or local historical society, museum or institutional collection which is open to the public, provided that the large-capacity magazine is properly housed, secured from unauthorized handling and unloaded;
- (10) Any person who finds the large-capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possesses the large-capacity magazine no longer than is necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to the law;
- (11) A forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities;
- (12) Any person in the business of selling or transferring large-capacity magazines in accordance with California Penal Code Section 32310 who is in possession of a large-capacity magazine solely for the purpose of doing so; or
- (13) Any person lawfully in possession of a firearm that the person obtained prior to January 1, 2000 if no magazine that holds 10 or less rounds of ammunition is compatible with that firearm and the person possesses the large-capacity magazine solely for use with that firearm.
- (14) Any qualified retired peace officer, as defined by Section 926C of Title 18 of the United States Code, who has a valid Carry Concealed Weapons endorsement, license or permit. **(Added by Ord. No. 184,007, Eff. 1/26/16.)**
- (15) Any qualified reserve peace officer, as defined by California Penal Code Section 830.6, to the extent that such person is otherwise authorized by his or her respective state, county, or city law enforcement agency to possess a large-capacity magazine for use in accordance with the law enforcement policy of the agency. **(Added by Ord. No. 184,007, Eff. 1/26/16.)**

(d) **Penalty.** Violation of this section shall constitute a misdemeanor.

(e) This Section shall expire on July 1, 2017, unless the City Council acts by ordinance to amend this Section to extend its effective period. **(Added by Ord. No. 184,767, Eff. 4/4/17.)**

(f) **Severability.** If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions which can be implemented without the invalid provisions, and to this end, the provisions of this ordinance are declared to be severable. **(Renumbered by Ord. No. 184,767, Eff. 4/4/17.)**

**SEC. 55.13. SALE OF AMMUNITION CLIPS AND SIMILAR DEVICES.****(Amended by Ord. No. 172,002, Eff. 6/5/98.)**

(a) No person shall sell or otherwise transfer to any other person a clip, magazine, belt, drum, feed strip or similar device which has a capacity of, or which can be readily restored or converted to accept, more than ten rounds of ammunition.

(b) The provisions of this section shall not apply to:

1. the sale or transfer of such devices to any person described in Section 12302 or 12322 of the Penal Code of the State of California, or

2. the sale or transfer of ownership of such a device by a wholesale gun dealer to another wholesale gun dealer or by a wholesale gun dealer to a retail gun dealer, or

3. any entity or establishment engaged in the business of motion picture, television, video, theatrical, or re-enactment production, provided the clip, magazine, belt, drum, feed strip or similar device is used solely as a prop in the course of motion picture, television, video, theater, or re-enactment production by an authorized participant therein or by an authorized agent or employee of the entity or establishment, and only if the entity or establishment properly secures such clip, magazine, belt, drum, feed strip or similar device from unauthorized use, or

4. any federal, state or local historical society, museum or institutional collection which is open to the public provided any such clip, magazine, belt, drum, feed strip or similar device is properly housed, secured from unauthorized handling and is unloaded.



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## Los Angeles Municipal Code

**SEC. 55.13. SALE OF AMMUNITION CLIPS AND SIMILAR DEVICES.****(Amended by Ord. No. 172,002, Eff. 6/5/98.)**

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4. any federal, state or local historical society, museum or institutional collection which is open to the public provided any such clip, magazine, belt, drum, feed strip or similar device is properly housed, secured from unauthorized handling and is unloaded.

## San Francisco Police Code

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## SEC. 619. PROHIBITION AGAINST POSSESSION OF LARGE CAPACITY MAGAZINES.

(a) **Findings.**

(1) In 2007, 3,231 people died from firearm-related injuries in California, and 4,491 other people were treated for non-fatal gunshot wounds.

(2) The ability of an automatic or semiautomatic firearm to fire multiple bullets without reloading is directly related to the capacity of the firearm's feeding device or "magazine." Inside the magazine, a spring forces the cartridges into position to be fed into the chamber by operation of the firearm's action.

(3) Magazines with a capacity of more than 10 rounds of ammunition are generally considered to be "large capacity" magazines, although the statutory definitions vary. In some cases, large capacity magazines can hold up to 100 rounds of ammunition. Other types of firearms, in contrast, are generally capable of holding far less ammunition: for example, revolvers typically hold six rounds of ammunition in a rotating cylinder.

(4) Although detachable large capacity magazines are typically associated with machine guns or semiautomatic assault weapons, such devices are available for any semiautomatic firearm that accepts a detachable magazine, including semiautomatic handguns.

(5) The ability of large capacity magazines to hold numerous rounds of ammunition significantly increases the lethality of the automatic and semiautomatic firearms using them.

(6) Large capacity magazines were used in a number of recent high-profile shootings, including:

The shooting on the campus of Virginia Tech on April 16, 2007, where 32 people were killed and many others wounded,

The shooting in a gym in Pittsburgh on August 4, 2009, where three people were killed and nine others injured.

The shooting on November 5, 2009 at Fort Hood, Texas, where 13 people were killed and 34 more were wounded.

The shooting on January 8, 2011, at Tucson, Arizona, where 6 people were killed and 13 people were injured, including a member of the United States House of Representatives, and

The shootings on December 14, 2012, at Newtown, Connecticut, where 27 people (not including the shooter) were killed.

(7) Large capacity magazines have also been used against San Francisco police officers, including a recent incident at India Basin Shoreline Park, where undercover police officers were targeted with semiautomatic pistols containing 30-round magazines. Prohibiting large capacity magazines serves police safety by requiring perpetrators to pause to reload their firearms more frequently, giving police officers greater opportunity to apprehend them.

(8) Large capacity magazine bans reduce the capacity, and thus the potential lethality, of any firearm that can accept a large capacity magazine.

(9) Large capacity magazines are not necessary for individuals to vindicate their right to self-defense. Only in an extraordinarily rare circumstance would a person using a firearm in self-defense ever be required to use a large capacity magazine to defend himself or herself effectively. This is particularly true in

an urban center like San Francisco, where law enforcement can and does respond quickly to threats and incidents. Conversely, the dangers of large capacity magazines are heightened in dense urban areas like San Francisco.

(10) In 1994, in recognition of the dangers posed by these devices, Congress adopted a law prohibiting the transfer and possession of large capacity magazines as part of the federal assault weapon ban. That law was filled with loopholes, however.

(11) The federal law was enacted with a sunset clause, providing for its expiration after ten years. Despite overwhelming public support for the law, Congress allowed the federal ban to expire on September 13, 2004.

(12) Research commissioned by the U.S. Department of Justice to analyze the effect of the 1994 federal ban on assault weapons and large capacity magazines found that attacks with semiautomatics including assault weapons and other semiautomatics equipped with large capacity magazines result in more shots fired, more persons hit, and more wounds inflicted per victim than do attacks with other firearms.

(13) Since January 1, 2000, California Penal Code §§ 32310 *et seq.*, have, with limited exceptions, prohibited the manufacture, importation into the state, keeping for sale, offering or exposing for sale, giving, or lending of large capacity magazines. California law does not, however, prohibit the possession of these magazines, and this gap in the law threatens public safety.

(b) **Definition.** "Large capacity magazine" means any detachable ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:

(1) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds;

(2) A .22 caliber tube ammunition feeding device; or

(3) A tubular magazine that is contained in a lever-action firearm.

(c) **Prohibition on Possession of Large Capacity Magazines.**

(1) No person, corporation, or other entity in the City may possess a large capacity magazine, whether assembled or disassembled.

(2) Any person who, prior to the effective date of this chapter, was legally in possession of a large capacity magazine shall have 90 days from such effective date to do any of the following without being subject to prosecution:

(A) Remove the large capacity magazine from the City;

(B) Surrender the large capacity magazine to the Police Department for destruction; or

(C) Sell or transfer the large capacity magazine lawfully in accordance with Penal Code § 12020.

(d) **Exceptions.** Subsection (c) shall not apply to the following:

(1) Any government officer, agent, or employee, member of the armed forces of the United States, or peace officer, to the extent that such person is otherwise authorized to possess a large capacity magazine in connection with his or her official duties;

(2) A person licensed pursuant to Penal Code §§ 26700 to 26915, inclusive;

(3) A gunsmith for the purposes of maintenance, repair or modification of the large capacity magazine;

(4) Any entity that operates an armored vehicle business pursuant to the laws of the state, and an authorized employee of such entity, while in the course and scope of his or her employment for purposes that pertain to the entity's armored vehicle business;

(5) Any person, corporation or other entity that manufactures the large capacity magazine for a person mentioned in subsection (a) or for export pursuant to applicable federal regulations;

(6) Any person using the large capacity magazine solely as a prop for a motion picture, television, or video production, or entertainment event;

(7) Any holder of a special weapons permit issued pursuant to Penal Code § 33300, 32650, 32700, 31000, or 18900;

(8) Any person issued a permit pursuant to Penal Code § 32315 by the California Department of Justice upon a showing of good cause for the possession, transportation, or sale of large capacity magazines between a person licensed pursuant to Penal Code §§ 26700 to 26915 and an out-of-state client, when those activities are in accordance with the terms and conditions of that permit;

(9) Any federal, state or local historical society, museum, or institutional collection which is open to the public, provided that the large capacity magazine is properly housed secured from unauthorized handling, and unloaded;

(10) Any person who finds the large capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possesses the large capacity magazine no longer than is necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law;

(11) A forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities;

(12) Any person in the business of selling or transferring large capacity magazines in accordance with Penal Code § 12020, who is in possession of a large capacity magazine solely for the purpose of doing so; or

(13) Any person lawfully in possession of a firearm that the person obtained prior to January 1, 2000 if no magazine that holds 10 or less rounds of ammunition is compatible with that firearm and the person possesses the large capacity magazine solely for use with that firearm.

(e) **Penalty.** Any person violating this chapter is guilty of a misdemeanor.

(f) **Severability.** If any subsection, sentence, clause, phrase, or word of this Section be for any reason declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or the effectiveness of the remaining portions of this Section or any part thereof. The Board of Supervisors hereby declares that it would have adopted this Section notwithstanding the unconstitutionality, invalidity, or ineffectiveness of any one or more of its subsections, sentences, clauses, phrases, or words.

(g) **No Duplication of State Law.** In the event that the State of California enacts legislation prohibiting possession of large capacity magazines, this Section 618<sup>1</sup> shall have no force or effect to the extent that it duplicates any such state law.

(Added by Ord. [249-13](#), File No. 130585, App. 11/8/2013, Eff. 12/8/2013)

#### CODIFICATION NOTE

1. So in Ord. [249-13](#).

## 9.38.030 - Definitions.

"Large-capacity magazine" means any detachable ammunition feeding device with the capacity to accept more than ten rounds, but shall not be construed to include any of the following:

1. A feeding device that has been permanently altered so that it cannot accommodate more than ten rounds;
2. A .22 caliber tube ammunition feeding device;
3. A tubular magazine that is contained in a lever-action firearm.

(Ord. No. 13352, § 1(C), 1-19-2016)

## 9.38.040 - Possession of large-capacity magazines prohibited.

- A. It is unlawful for any person to possess any large-capacity magazine, except as otherwise authorized by law, whether assembled or disassembled.
- B. Any person who, prior to the effective date of this article, was legally in possession of a large-capacity magazine shall have ninety (90) days from such effective date to do any of the following without being subject to prosecution:
  1. Remove the large-capacity magazine from the City of Oakland;
  2. Surrender the large-capacity magazine to the Oakland Police Department for destruction;
  3. Sell or transfer the large-capacity magazine lawfully in accordance with Section 32410 of the California Penal Code.

(Ord. No. 13352, § 1(D), 1-19-2016)

Sec. 54-212. - Assault weapons, and large-capacity magazines; sale prohibited; exceptions.

- (a) It shall be unlawful for any person to manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire, carry or possess any assault weapon or large capacity magazine in Cook County. This subsection shall not apply to:
  - (1) The sale or transfer to, or possession by any officer, agent, or employee of Cook County or any other municipality or state or of the United States, members of the armed forces of the United States; or the organized militia of this or any other state; or peace officers to the extent that any such person named in this subsection is otherwise authorized to acquire or possess an assault weapon and/or large capacity magazine and does so while acting within the scope of his or her duties;
  - (2) Transportation of assault weapons or large capacity magazine if such weapons are broken down and in a nonfunctioning state and are not immediately accessible to any person.
- (b) Any assault weapon or large capacity magazine possessed, carried, sold or transferred in violation of Subsection (a) of this section is hereby declared to be contraband and shall be seized and disposed of in accordance with the provisions of Section 54-213.
- (c) Any person including persons who are a qualified retired law enforcement officer as defined in 18 U.S.C. § 926C who, prior to the effective date of the ordinance codified in this section, was legally in possession of an assault weapon or large capacity magazine prohibited by this division shall have 60 days from the effective date of the ordinance to do any of the following without being subject to prosecution hereunder:
  - (1) To legally remove the assault weapon or large capacity magazine from within the limits of the County of Cook; or
  - (2) To modify the assault weapon or large capacity magazine either to render it permanently inoperable; or
  - (3) To surrender the assault weapon or large capacity magazine to the Sheriff or his designee for disposal as provided below.

(Ord. No. 13-O-32, 7-17-2013.)

## Sec. 29-49. - Transfer or possession of assault ammunition or assault weapons.

- (a) No person shall sell, offer or display for sale, give, lend, transfer ownership of, acquire or possess any assault weapon or large capacity ammunition feeding device.
- (b) This section shall not apply to:
  - (1) Any law enforcement officer of this or any other municipality or state of the United States, members of the armed forces of the United States, or the organized militia of this or any other state to the extent that any such person is otherwise authorized to possess an assault weapon or large capacity ammunition feeding device and is acting within the scope of his or her duties;
  - (2) Persons licensed as private security contractors, private detectives, private alarm contractors or employed by an agency certified by the department of professional regulation if their duties include the carrying of a weapon under the provisions of the Private Detective, Private Alarm, Private Security, and Locksmith Act of 2004 (225 ILCS 447/1) et seq.). while actually engaged in the performance of the duties of their employment or commuting between their homes and places of employment, provided that such commuting is accomplished within one (1) hour from departure from home or place of employment, as the case may be. Persons exempted under this paragraph shall be required to have completed a course of study in firearms handling and training approved and supervised by the department of professional regulation as prescribed by section 35-40 of the Private Detective, Private Alarm, Private Security, and Locksmith Act of 2004 (225 ILCS 447/35-40) prior to becoming eligible for this exemption. The department of professional regulation provides suitable documentation demonstrating the successful completion of the prescribed firearms training in the form of a firearm authorization card. Such firearm authorization card shall be carried at all times when such persons are in possession of a weapon, and further, persons exempted under this paragraph shall be in possession of only the weapon(s) specifically authorized and specified on the firearm authorization card.
  - (3) The transportation of assault weapons or large capacity ammunition feeding devices to persons exempt from this section, as set forth above, by federally licensed manufacturers and dealers, if the weapons or devices are broken down in a nonfunctioning state and not immediately accessible during transportation; or
  - (4) The government of the United States or the government of any municipality, county, or state.
  - (5) Any person who, while in their home and in an act of self-defense, uses either an assault weapon owned by a person mentioned in paragraph (1) above or such a weapon for which a certificate of ownership has been issued but for which they are not the certificate holder.
  - (6) Any assault weapon or large capacity ammunition feeding device possessed, sold or transferred in violation of subsection (a) above is hereby declared to be contraband and shall be seized and appropriately disposed of by the police department.
  - (7) Any person found in violation of this section shall be guilty of a Misdemeanor IV.
  - (8) Any person who, prior to the effective date of this section, was legally in possession of an assault weapon or large capacity ammunition feeding device prohibited by this section, shall have ninety (90) days from the effective date of this section to do any of the following without being subject to prosecution hereunder:
    - a. Remove the assault weapon or large capacity ammunition feeding device from within the limits of the city;
    - b. Modify the assault weapon either to render it permanently inoperable or to permanently make it a device no longer defined as an assault weapon;
    - c. Surrender the assault weapon or large capacity ammunition feeding device to the police chief or his designee for appropriate disposal; or
    - d. Obtain a certificate of ownership from the Aurora Police Department in accordance with subsection (g) below.

(c)—(e) Reserved.

(f) This section shall not apply to:

- (1) An antique firearm as defined below;
- (2) Any semiautomatic rifle with a fixed stock that cannot accept a detachable magazine or clip that holds more than

eight (8) rounds of ammunition;

- (3) Any semiautomatic shotgun that cannot hold more than five (5) rounds of ammunition in a fixed or detachable magazine;
- (4) Any firearm that can only be operated manually by bolt, pump, lever or slide action.
- (5) Any magazine, belt, drum, feed strip or similar device originally manufactured to accept more than fifteen (15) rounds of ammunition but which has been fitted with a permanent block so as to hold no more than fifteen (15) rounds of ammunition.

- (g) (1) Persons who, prior to the effective date of this section, lawfully possess assault weapons as defined herein may, within ninety (90) days of the effective date of this section, apply to the Aurora Police Department for a certificate of ownership for said assault weapons.

- a. No certificate of ownership shall, however, be granted for the following weapons:

Avtomat Kalashnikov AK-47 type (including all models of the Norinco, Mitchell and Poly Tech)

Beretta AR-70

Franchi SPAS-12 and LAW-12

MAC-11 carbine type

Street Sweeper and Striker 12 revolving cylinder shotguns

USAS-12

Uzi carbine and mini-carbine

Any assault weapon with a folding or telescoping stock which is not designed to be fired from the shoulder

Any pistol which meets the definition of an assault weapon except as set forth in paragraph b. below

- b. A certificate of ownership may be granted for any pistol originally manufactured to accept, in the pistol grip, a magazine designed to contain 16-17 rounds of ammunition but which does not extend below the pistol grip and does not otherwise meet the definition of an assault weapon.

- (2) The Aurora Police Department shall issue a certificate of ownership for each applicable weapon owned by the applicant if the applicant has a currently valid State of Illinois Firearm Owners Identification card. Said certificate shall not be transferable, except upon the death of the certificate holder and then only to his heir or legatee.
- (3) The Aurora Police Department shall not issue a certificate of ownership, and shall revoke any existing certificate of ownership, if the applicant or certificate holder is prohibited, under state or federal law, from possessing the assault weapon for which the certificate of ownership has been applied or issued.
- (4) All assault weapons for which a certificate of ownership has been issued shall be kept unloaded and stored in a locked environment when being transported or kept within the City of Aurora.
- (5) The City of Aurora shall not enact any ordinance imposing greater regulations upon assault weapons for which a certificate of ownership has been issued.

- (h) For the purpose of this section:

- (1) Antique firearm means:

- a. Any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured in or before 1898; and
    - b. Any replica of any firearm described in subparagraph (a) if the replica:
      - 1. Is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or
      - 2. Uses rimfire or conventional centerfire fixed ammunition which is not readily available in the ordinary channels of commercial trade.



## (2) Assault weapon means:

- a. Any of the firearms (or types, replicas, or duplicates in any caliber of the firearms regardless of manufacturer) known as:

A.A. Arms AP-9

Algimec Agmi

Armalite AR-180

Australian Automatic Arms SAP Pistol

Australian Automatic Arms SAR

Auto-Ordnance Thompson type

Avtomat Kalashnikov AK-47 type (including all models of the Norinco, Mitchell, and Poly Tech)

Barrett Light-Fifty model 82A1

Beretta AR-70 (SC-70)

Beretta BM-59

Bushmaster Auto Rifle and Auto Pistol

Calico models M-900, M-950 and 100-P

Chartered Industries of Singapore SR-88

Claridge High Tech

Colt AR-15 and Sporter

Daewoo K-1, K-2, Max-1 and Max-2

Encom MK-IV, MP-9 and MP-45

Fabrique Nationale FN/FAL, FN/LAR or FN/FNC

FAMAS MAS 223

Feather AT-9 and Mini-AT

Federal XC-900 and XC-450

Franchi SPAS-12 and LAW-12

Galil AR and ARM

Heckler & Koch HK-91, HK-93, HK-94, PSG-1, SP-89

Holmes Mp-83

Intratec TEC-9, TEC-DC-9, TEC-22 and Scorpion

Iver Johnson Enforce Model 3000

Iver Johnson PM30 Paratrooper

M14S type

MAC 10, M-10, MAC-11 and MAC-11 Carbine type

Ruger Mini-14/5F (folding stock only) and Mini-14/5RF

Scarab Skorpion

SIG 57 AMT, SIG 550SP, SIG 551SP, SIG PE-57 types and 500 series

Spectre Auto Carbine and Auto Pistol

Springfield Armory BM59, SAR-48 and G-3

Sterling MK-6 and MK-7 and SAR types

Steyr AUG

Street Sweeper and Striker 12 revolving cylinder shotguns

SWD M-10, M-11, M-11/9, M-12

Valmet M63, M71S, M76 or M78

USAS-12

UZI Carbine, Mini-Carbine and Pistol

Weaver Arms Nighthawk

Wilkinson "Linda" Pistol

- b. Any semiautomatic rifle that has a fixed magazine that can hold more than eight (8) rounds or an ability to accept a detachable magazine and has at least two (2) of the following:
    - 1. A folding or telescoping stock;
    - 2. A pistol grip that protrudes beneath the action of the weapon and which is separate and apart from the stock;
    - 3. A bayonet mount;
    - 4. A flash suppressor;
    - 5. A barrel with a threaded muzzle;
    - 6. A grenade launcher.
  - c. Any semiautomatic pistol that has an ability to accept a detachable magazine and has at least two (2) of the following:
    - 1. An ammunition magazine that attaches to the pistol outside of the pistol grip;
    - 2. A barrel having a threaded muzzle;
    - 3. A shroud that is attached to, or partially or completely encircles, the barrel and which permits the shooter to hold the firearm with the nontrigger hand without being burned;
    - 4. A manufactured weight of fifty (50) ounces or more when the pistol is unloaded;
    - 5. A semiautomatic version of an automatic firearm
  - d. Any semiautomatic shotgun that has either a fixed magazine with a capacity in excess of five (5) rounds or an ability to accept a detachable magazine and, in addition, has at least one (1) of the following:
    - 1. A folding or telescoping stock;
    - 2. A pistol grip that protrudes beneath the action of the firearm and which is separate and apart from the stock;
- (3) Firearm means any device, by whatever name known, which is designed to expel a projectile or projectiles by the

action of an explosion, expansion of gas or escape of gas; excluding, however:

- a. Any pneumatic gun, spring gun, paint ball gun or BB gun which either expels a single globular projectile not exceeding .18 inch in diameter and which has a maximum muzzle velocity of less than seven hundred (700) feet per second or breakable paint balls containing washable marking colors;
- b. Any device used exclusively for signaling or safety and required or recommended by the United States Coast Guard or the Interstate Commerce Commission; or
- c. Any device used exclusively for the firing of stud cartridges, explosive rivets or similar industrial ammunition.

(4) Large capacity ammunition feeding device means:

- a. Any magazine, belt, drum, feed strip or similar device that has a capacity of, or can be readily restored or converted to accept, more than fifteen (15) rounds of ammunition; or
- b. Any combination of parts from which a device described in the above clause can be assembled;

The term does not include an attached tubular device designed to accept and capable of operating with only .22 caliber rimfire ammunition.

- (5) Pistol means any firearm designed to be fired by the use of a single hand, as well as any combination of parts from which a pistol can be assembled.
- (6) Rifle means a firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.
- (7) Semiautomatic means a firearm that utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.
- (8) Shotgun means a firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth or rifled bore either a number of ball shot or a single projectile for each single pull of the trigger.

(Ord. No. 094-47, § 1, 5-17-94; Ord. No. 009-79, § 2, 9-22-09)

**3-13G-3. - Assault weapons and assault ammunition prohibited.**

(a) *Definitions* . As used in this section, the following terms shall have the following meanings:

*Assault ammunition:* A detachable magazine capacity of which is more than sixteen (16) rounds center fire.

*Assault weapon:* Any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically, more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended, for use in converting a weapon into a machine gun, any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

(b) *Assault weapons or ammunition; sale prohibited; exceptions.*

- (1) No person shall sell, offer or display for sale, give, lend, transfer ownership of, acquire or possess, manufacture or distribute any assault weapon or assault ammunition within the corporate limits of the village. This subsection shall not apply to:
  - a. The sale, distribution or the possession for sale and distribution by any firearms dealer licensed pursuant to this article of an assault weapon or assault ammunition to any officer, agent or employee of the village or any other municipality, county, body politic or state or of the United States, members of the armed forces of the United States; or the organized militia of this or any other state, and peace officers to the extent that any such person is otherwise authorized to acquire or possess an assault weapon or assault ammunition and is acting within the scope of his or her duties;
  - b. The possession for sale and distribution or the sale to, or the acquisition or possession of assault ammunition by persons employed to provide security for armored carriers or mobile check cashing services while in the course of such duties, while commuting directly to or from the person's place of employment, and while at the person's home, if the assault ammunition is sold, acquired or possessed for use with a weapon that the person has been authorized to carry under section 28 of the Illinois Private Detective, Private Alarm and Private Security Act of 1983.
  - c. Transportation of assault weapons if such weapons are broken down and in a nonfunctioning state and are not immediately accessible to any person.
- (2) Any assault weapon or assault ammunition possessed, sold or transferred in violation of subsection (b)(1) of this section is hereby declared to be contraband and shall be seized and disposed of in accordance with as provided in subsection (c) of this section.
- (3) Any person found in violation of this section shall be fined not less than two hundred fifty dollars (\$250.00) and not more than five hundred dollars (\$500.00), or both.
- (4) Any person who, prior to the effective date of the ordinance codified in this article, was legally in possession of an assault weapon or assault ammunition prohibited by this section, shall have fourteen (14) days from the effective date of the ordinance codified in this section to do any of the following without being subject to prosecution hereunder:
  - a. To remove the assault weapon or ammunition from within the limits of the village; or
  - b. To modify the assault weapon either to render it permanently inoperable or to permanently make it a device no longer defined as an assault weapon; or
  - c. To surrender the assault weapon or ammunition to the chief of police of the village or said chief's designee for disposal as provided below.

(c) *Destruction of weapons confiscated.* Whenever any firearm or ammunition is surrendered or confiscated pursuant to the terms of this article, the chief of police shall ascertain whether such firearm or ammunition is

needed as evidence in any matter.

If such firearm or ammunition is not required for evidence, it shall be destroyed at the direction of the chief of police. A record of the date and method of destruction and inventory of the firearm or ammunition so destroyed shall be maintained.

(Ord. 9495 VC 9, § 1)

## Article 2

# POSSESSION AND CARRYING OF WEAPONS

### 27-2-1: UNLAWFUL TO POSSESS OR CARRY; EXCEPTIONS:

It shall be unlawful for any person to possess or carry, or for any person to permit another to possess or carry on his/her land or in his/her place of business any assault weapon or assault ammunition feeding device, and it shall be unlawful for any person to carry any rifle, shotgun, firearm, or assault weapon or assault ammunition feeding device in any vehicle or permit same to be carried in any vehicle to which such person is the title owner of record or about his/her person, except that a person may carry any rifle, shotgun or firearm when on his/her land or in his/her abode or fixed place of business; provided that this section shall not apply to:

- A. Peace officers or any person summoned by any such officers to assist in making arrests or preserving the peace while he/she is actually engaged in assisting such officer;
- B. Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of an offense; provided, however, that this exemption shall apply to the carrying of a weapon only while one is engaged in the performance of his/her official duty or while commuting between his/her home and place of employment;
- C. Members of the armed services or reserve forces of the United States or the Illinois national guard or organized militia; provided, however, that this exemption shall apply to the carrying of a weapon only while one is engaged in the performance of his/her official duty;
- D. Special agents employed by a railroad or a public utility to perform police functions, watchmen, security guards and "special police" appointed under section [19-2-2](#) of this code; provided, however, that this exemption shall apply to the carrying of a weapon only while one is actually engaged in the performance of the duties of his/her employment or while commuting between his/her home and place of employment; and provided further that said security guards are in full compliance with appropriate provisions of subsection (a)(4) of section 24-2 of the Illinois criminal code and other applicable laws and that said "special police" are in full compliance with sections [19-2-1](#) through [19-2-4](#) of this code and other applicable laws;
- E. Agents and investigators of the Illinois crime investigating commission authorized by the commission to carry weapons; provided, however, that this exemption shall apply to the carrying of a weapon only while one is on duty in the course of any investigation for the commissioner;
- F. Manufacture, transportation or sale of weapons to persons authorized under law to possess such;

- G. Duly authorized military or civil organizations while parading, with the special permission of the Governor;
- H. Licensed hunters or fishermen while commuting to or from established game areas; provided, however, that this exemption shall not apply to the possession or carrying of "firearms" as defined in section [27-1-1](#) of this chapter;
- I. Transportation of weapons broken down in a nonfunctioning state or unloaded with neither the weapon nor any ammunition readily or directly accessible from the passenger compartment of the transporting vehicle; provided, that in the case of a vehicle without a compartment separate from the driver's compartment, the firearm or ammunition shall be contained in a locked container other than the glove compartment or console; provided, however, that the transportation of assault weapons must not originate or terminate within the Village to qualify as an exception to this section;
- J. Antique firearms;
- K. Licensed firearm collectors;
- L. Members of established theater organizations located in Oak Park and performing a regular performance schedule to the public, utilizing only blank ammunition in the discharge of weapons only during rehearsals, classes or performances; provided further that said organization maintains possession and control over these weapons in a safe place with a designated member of the organization when the weapons are not in use.

Any weapon carried pursuant to the exemptions of subsections [27-2-1](#)F through I of this section shall be carried unloaded, and anyone possessing a firearm pursuant to exemptions of subsections [27-2-1](#)J and L of this section shall not possess or carry any ammunition therefor. (Ord. 2010-0-47, 7-19-10)

Sec. 136.005. - Possession and Sale Prohibited.

No person shall manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire or possess any Assault Weapon or Large Capacity Magazine, unless expressly exempted in Section 136.006 of this Chapter.



**VILLAGE OF DEERFIELD  
LAKE AND COOK COUNTIES, ILLINOIS**

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**ORDINANCE NO.           O-18-06**

**AN ORDINANCE AMENDING CHAPTER 15 (MORALS AND CONDUCT),  
ARTICLE 11 (ASSAULT WEAPONS), SECTION 15-87 (SAFE STORAGE OF  
ASSAULT WEAPONS) AND SECTION 15-88 (TRANSPORTATION OF ASSAULT  
WEAPONS) OF THE MUNICIPAL CODE OF THE VILLAGE OF DEERFIELD  
TO REGULATE THE POSSESSION, MANUFACTURE AND SALE OF ASSAULT  
WEAPONS IN THE VILLAGE OF DEERFIELD**

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**PASSED AND APPROVED BY THE  
PRESIDENT AND BOARD OF TRUSTEES  
OF THE VILLAGE OF DEERFIELD, LAKE  
AND COOK COUNTIES, ILLINOIS, this**

**2nd   day of   April  , 2018.**

**Published in pamphlet form  
by authority of the President  
and Board of Trustees of the  
Village of Deerfield, Lake and  
Cook Counties, Illinois, this  
  2nd   day of   April  , 2018.**

**VILLAGE OF DEERFIELD  
LAKE AND COOK COUNTIES, ILLINOIS**

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**ORDINANCE NO.   O-18-06**

**AN ORDINANCE AMENDING CHAPTER 15 (MORALS AND CONDUCT),  
ARTICLE 11 (ASSAULT WEAPONS), SECTION 15-87 (SAFE STORAGE OF  
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TO REGULATE THE POSSESSION, MANUFACTURE AND SALE OF ASSAULT  
WEAPONS IN THE VILLAGE OF DEERFIELD**

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**WHEREAS**, Chapter 15 (Morals and Conduct), Article 11 (Assault Weapons), Section 15-87 (Safe Storage of Assault Weapons; Exceptions) and Section 15-88 (Transportation of Assault Weapons; Exceptions) of the Municipal Code of the Village of Deerfield, as enacted by Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), regulate the possession, storage and transportation of assault weapons in the Village of Deerfield; and

**WHEREAS**, the Firearm Concealed Carry Act, 430 ILCS 65/13.1(c), as amended by Public Act 98-63, § 150 (eff. July 9, 2013), provides that the Village of Deerfield, as a home rule unit of local government under the provisions of Article VII, Section 6 of the Illinois Constitution of 1970, may amend Village of Deerfield Ordinance No. 0-13-24, which was enacted on, before or within ten (10) days after the effective date of Public Act 98-63, § 150, pursuant to the Village's home rule exercise of any power and performance of any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that, since the enactment of Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), assault weapons have been increasingly used in an alarming number of notorious mass shooting incidents at public

schools, public venues, places of worship and places of public accommodation including, but not limited to, the recent mass shooting incidents in Parkland, Florida (Margery Stoneman Douglas High School; 17 people killed), Sutherland Springs, Texas (First Baptist Church; 26 people killed), Las Vegas, Nevada (Music Festival; 58 people killed), and Orlando, Florida (Pulse Nightclub; 49 people killed); and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that assault weapons are dangerous and unusual weapons which are commonly associated with military or antipersonnel use, capable of a rapid rate of fire, have the capacity to fire a large number of rounds due to large capacity fixed magazines or the ability to use detachable magazines, present unique dangers to law enforcement, and are easily customizable to become even more dangerous weapons of mass casualties and destruction; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that amending Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013) to prohibit the possession, manufacture and sale of assault weapons in the Village of Deerfield may increase the public's sense of safety at the public schools, public venues, places of worship and places of public accommodation located in the Village of Deerfield; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that amending Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013) to prohibit the possession, manufacture and sale of assault weapons in the Village of Deerfield may increase the public's sense of safety by deterring and preventing a mass shooting incident in the Village of Deerfield, notwithstanding potential objections regarding the availability of alternative weaponry or the enforceability of such a ban; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that amending Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013) to prohibit the possession, manufacture

and sale of assault weapons in the Village of Deerfield may increase the public's sense of safety by effecting a cultural change which communicates the normative value that assault weapons should have no role or purpose in civil society in the Village of Deerfield; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that, since the enactment of Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), the possession, manufacture and sale of assault weapons in the Village of Deerfield is not reasonably necessary to protect an individual's right of self-defense or the preservation or efficiency of a well-regulated militia; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that, since the enactment of Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), courts throughout our State and Nation have uniformly upheld the constitutionality of local ordinances and legislation prohibiting the possession, manufacture and sale of assault weapons including, but not limited to, an ordinance enacted by the City of Highland Park, Illinois; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that, since the enactment of Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), State and Federal authorities have failed to regulate the possession, manufacture and sale of assault weapons in the best interests for the protection of the public health, safety, morals and welfare of the Village of Deerfield; and

**WHEREAS**, the corporate authorities of the Village of Deerfield request that State and Federal authorities enact Statewide or Nationwide regulations to prohibit the possession, manufacture or sale of assault weapons; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that amending Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013) to prohibit the possession, manufacture

and sale of assault weapons in the Village of Deerfield is in the Village's best interests for the protection of the public health, safety, morals and welfare of the Village of Deerfield;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF DEERFIELD, LAKE AND COOK COUNTIES, ILLINOIS, in the exercise of its home rule powers, as follows:

**SECTION 1:** The recitals to this Ordinance are incorporated into and made a part of this Ordinance as if fully set forth herein.

**SECTION 2:** Chapter 15 (Morals and Conduct), Article 11 (Assault Weapons), Section 15-86 (Definitions), Section 15-87 (Safe Storage of Assault Weapons; Exceptions) and Section 15-88 (Transportation of Assault Weapons; Exceptions) of the Municipal Code of the Village of Deerfield, as enacted by Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), shall be amended to read as follows (additions are indicated by underlining and deletions are indicated by ~~strikeout~~ markings):

#### **Article 11. Assault Weapons.**

##### **Sec. 15-86. Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Assault weapon* means:

- (1) A semiautomatic rifle that has the capacity to accept a large capacity magazine detachable or otherwise and one or more of the following:
  - (A) Only a pistol grip without a stock attached;
  - (B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
  - (C) A folding, telescoping or thumbhole stock;
  - (D) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel; or

- (E) A muzzle brake or muzzle compensator.
- (2) A semiautomatic rifle that has a fixed magazine that has the capacity to accept more than ten rounds of ammunition.
- (3) A semiautomatic pistol that has the capacity to accept a detachable magazine and has one or more of the following:
  - (A) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
  - (B) A folding, telescoping or thumbhole stock;
  - (C) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel;
  - (D) The capacity to accept a detachable magazine at some location outside of the pistol grip.
- (4) A semiautomatic shotgun that has one or more of the following:
  - (A) Only a pistol grip without a stock attached;
  - (B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
  - (C) A folding, telescoping or thumbhole stock;
  - (D) A fixed magazine capacity in excess of five rounds; or
  - (E) An ability to accept a detachable magazine.
- (5) Any shotgun with a revolving cylinder.
- (6) Conversion kit, part or combination of parts, from which an assault weapon can be assembled if those parts are in the possession or under the control of the same person.
- (7) Shall include, but not be limited to, the assault weapons models identified as follows:
  - (A) The following rifles or copies or duplicates thereof:
    - (i) AK, AKM, AKS, AK-47, AK-74, ARM, MAK90, Misr, NHM 90, NHM 91, SA 85, SA 93, VEPR;
    - (ii) AR-10;
    - (iii) AR-15, Bushmaster XM15, Armalite M15, or Olympic Arms PCR;
    - (iv) AR70;
    - (v) Calico Liberty;
    - (vi) Dragunov SVD Sniper Rifle or Dragunov SVU;
    - (viii) Fabrique National FN/FAL, FN/LAR, or FNC;
    - (viii) Hi-Point Carbine;
    - (ix) HK-91, HK-93, HK-94, or HK-PSG-1;
    - (x) Kel-Tec Sub Rifle;

- (xi) Saiga;
- (xii) SAR-8, SAR-4800;
- (xiii) SKS with detachable magazine;
- (xiv) SLG 95;
- (xv) SLR 95 or 96;
- (xvi) Steyr AUG;
- (xvii) Sturm, Ruger Mini-14;
- (xviii) Tavor;
- (xix) Thompson 1927, Thompson M1, or Thompson 1927 Commando; or
- (xx) Uzi, Galil and Uzi Sporter, Galil Sporter, or Galil Sniper Rifle (Galatz).

(B) The following pistols or copies or duplicates thereof, when not designed to be held and fired by the use of a single hand:

- (i) Calico M-110;
- (ii) MAC-10, MAC-11, or MPA3;
- (iii) Olympic Arms OA;
- (iv) TEC-9, TEC-DC9, TEC-22 Scorpion, or AB-10; or
- (v) Uzi.

(C) The following shotguns or copies or duplicates thereof:

- (i) Armscor 30 BG;
- (ii) SPAS 12 or LAW 12;
- (iii) Striker 12; or
- (iv) Streetsweeper.

“Assault weapon” does not include any firearm that has been made permanently inoperable, or satisfies the definition of “antique ~~firearm~~ handgun,” stated in this ~~section~~ Code, or weapons designed for Olympic target shooting events.

*Detachable magazine* means any ammunition feeding device, the function of which is to deliver one or more ammunition cartridges into the firing chamber, which can be removed from the firearm without the use of any tool, including a bullet or ammunition cartridge.

*Large capacity magazine* means any ammunition feeding device with the capacity to accept more than ten rounds, but shall not be construed to include the following:

- (1) A feeding device that has been permanently altered so that it cannot accommodate more than ten rounds.
- (2) A 22 caliber tube ammunition feeding device.
- (3) A tubular magazine that is contained in a lever-action firearm.

*Muzzle brake* means a device attached to the muzzle of a weapon that utilizes escaping gas to reduce recoil.

*Muzzle compensator* means a device attached to the muzzle of a weapon that utilizes escaping gas to control muzzle movement.

**Sec. 15-87. Safe Storage of Assault Weapons; Exceptions.**

(a) ~~Safe Storage.~~ It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon in the Village, ~~unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user.~~ For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.

(b) ~~Self defense exception.~~ No person shall be punished for a violation of this section if an assault weapon is used in a lawful act of self defense or in defense of another.

(c) The provisions of this section, excluding those pertaining to the manufacture and sale of any assault weapon in the Village, do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely stored and secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any such law enforcement officer, service member or qualified retired law enforcement officer.

**Section 15-88. Transportation of Assault Weapons; Exceptions.**

(a) It is unlawful and a violation of this section for any person to carry, keep, bear, transport or possess an assault weapon in the Village, ~~except when on his land or in his own abode, legal dwelling or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission,~~ except that this section does not apply to or affect transportation of assault weapons that meet one of the following conditions:

- (i) are broken down in a non-functioning state; ~~or~~ and
- (ii) are not immediately accessible to any person; or



(iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, ~~or~~

(b) The provisions of this section do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves officer, agent or employee of any municipality of the commonwealth, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely transported in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any such law enforcement officer, service member or qualified retired law enforcement officer.

#### **Section 15-89. Penalty.**

Any person who is found to have violated this Article shall be fined not less than \$250 and not more than \$1,000 for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues. Every person convicted of any violation under this Article shall, in addition to any penalty provided in this Code, forfeit to the Village any assault weapon.

#### **Section 15-90. Disposition of Assault Weapon and Large Capacity Magazine.**

Any person who, prior to the effective date of Ordinance No. \_\_\_\_\_, was legally in possession of an Assault Weapon or Large Capacity Magazine prohibited by this Article, shall have 60 days from the effective date of Ordinance No. \_\_\_\_\_, to do any of the following without being subject to prosecution hereunder:

(a) Remove, sell or transfer the Assault Weapon or Large Capacity Magazine from within the limits of the Village;

(b) Modify the Assault Weapon or Large Capacity Magazine either to render it permanently inoperable or to permanently make it a device no longer defined as an Assault Weapon or Large Capacity Magazine; or

(c) Surrender the Assault Weapon or Large Capacity Magazine to the Chief of Police or his or her designee for disposal as provided in Section 15-91 of this Article.

**Section 15-91. Destruction of Assault Weapons and Large Capacity Magazines.**

The Chief of Police or his or her designee shall have the power to confiscate any assault weapon of any person charged with a violation under this Article. The Chief of Police shall cause to be destroyed each Assault Weapon or Large Capacity Magazine surrendered or confiscated pursuant to this Article; provided, however, that no Assault Weapon or Large Capacity Magazine shall be destroyed until such time as the Chief of Police determines that the Assault Weapon or Large Capacity Magazine is not needed as evidence in any matter. The Chief of Police shall cause to be kept a record of the date and method of destruction of each Assault Weapon or Large Capacity Magazine destroyed pursuant to this Article.

**SECTION 3:** The Village Manager, or his designee, is authorized and directed to submit to the Illinois Department of State Police a copy of this Ordinance, 30 days after its adoption, and any such other measures as may be necessary to effect the requirements of 430 ILCS 65/13.3.

**SECTION 4:** If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

**SECTION 5:** This Ordinance, and each of its terms, shall be the effective legislative act of a home rule municipality without regard to whether such Ordinance should: (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law; or, (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the Village of Deerfield that to the extent that the terms of this Ordinance should be inconsistent with any non-preemptive state law, this Ordinance shall supersede state law in that regard within its jurisdiction.

**SECTION 6:** This Ordinance shall be in full force and effect upon its passage and approval and shall subsequently be published in pamphlet form as provided by law.

PASSED this 2nd day of April, 2018.

AYES: Benton, Jester, Oppenheim, Seiden, Shapiro, Struthers

NAYS: None

ABSENT: None

ABSTAIN: None

APPROVED this 2nd day of April, 2018.



Village President Pro Tem

ATTEST:



Village Clerk

## Sec. 38-130. - Assault weapons.

- (a) *Legislative intent.* The city council hereby finds and declares that the use of assault weapons poses a threat to the health, safety and security of all citizens of the City and County of Denver. Further, the council finds that assault weapons are capable both of a rapid rate of fire as well as of a capacity to fire an inordinately large number of rounds without reloading and are designed primarily for military or antipersonnel use. The city council finds that law enforcement agencies report increased use of assault weapons for criminal activities. This has resulted in a record number of related homicides and injuries to citizens and law enforcement officers. It is, therefore, the intent of the city council to place reasonable and necessary restrictions on the sale and possession of assault weapons while placing no restrictions on the right of citizens to use weapons which are primarily designed and intended for hunting, target practice and other legitimate sports or recreational activities and the protection of home, person and property.
- (b) *Definitions.* The following words and phrases, when used in this section, shall have these meanings respectively ascribed to them:
- (1) *Assault weapon* shall include all firearms with any of the following characteristics:
    - a. All semiautomatic action, centerfire rifles with a detachable magazine with a capacity of more than fifteen (15) rounds.
    - b. All semiautomatic shotguns with a folding stock or a magazine capacity of more than six (6) rounds or both.
    - c. Reserved.
    - d. Any firearm which has been modified to be operable as an assault weapon as defined herein.
    - e. Any part or combination of parts designed or intended to convert a firearm into an assault weapon, including a detachable magazine with a capacity of more than fifteen (15) rounds, or any combination of parts from which an assault weapon may be readily assembled if those parts are in the possession or under the control of the same person.
  - (2) *Bump stock* shall mean any device for a pistol, rifle, or shotgun that increases the rate of fire achievable with such weapon by using energy from the recoil of the weapon to generate a reciprocating action that facilitates repeated activation of the trigger.
  - (3) *Fixed cartridge* shall mean that self-contained unit consisting of the case, primer, propellant charge and projectile or projectiles.
  - (4) *Magazine* shall mean a box, drum or other container which holds and feeds ammunition into a semiautomatic rifle, shotgun or pistol.
  - (5) *Pistol* shall mean a weapon originally designed, made and intended to fire a projectile (bullet) from one (1) or more barrels when held in one (1) hand and having:
    - a. A chamber as an integral part of or permanently aligned with the bore or having a breech-loading chambered cylinder so arranged that the cocking of the hammer or movement of the trigger rotates it and brings the next cartridge in line with the barrel for firing; and
    - b. A short stock designed to be gripped by one (1) hand and at an angle to and extending below the line of the bore(s).
  - (6) *Rifle* shall mean a weapon designed or redesigned, made or remade and intended to be fired from the shoulder or hip and designed or redesigned or made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger and shall include any such weapon which may be readily restored to fire a fixed cartridge.
  - (7) *Semiautomatic* shall mean a weapon which fires a single projectile for each single pull of the trigger which automatically chambers the next round for firing and which employs a magazine.

- (8) *Shotgun* shall mean a weapon designed or redesigned, made or remade and intended to be fired from the shoulder designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger and shall include any device which may be readily restored to fire a fixed shotgun shell.
- (c) *Specific weapons not included.* As used in this section, *assault weapon* does not include any of the following:
- (1) All weapons that do not use fixed cartridges, all weapons that were in production prior to 1898, all manually operated bolt-action weapons, all lever-action weapons, all slide-action weapons, all single-shot weapons, all multiple-barrel weapons, all revolving-cylinder weapons, all semiautomatic weapons for which there is no fixed magazine with capacity of more than fifteen (15) rounds available, all semiautomatic weapons that use exclusively en bloc clips, all semiautomatic weapons in production prior to 1954 and all rimfire weapons that employ a tubular magazine.
  - (2) Any firearm that uses .22 caliber rimfire ammunition.
  - (3) Any assault weapon which has been modified either to render it permanently inoperable or to permanently make it a device no longer defined as an assault weapon.
- (d) *Supplemental provisions.* Except as specifically stated herein, the provisions of this section are independent of and supplemental to any other provisions of law, and nothing shall prevent a device defined as an *assault weapon* in this section from also being regulated under other provisions of law.
- (e) *Possession of assault weapons unlawful.* It shall be unlawful to carry, store, keep, manufacture, sell or otherwise possess within the City and County of Denver a weapon or weapons defined herein as assault weapons, except that this subdivision shall not apply to:
- (1) Any federal, state or local government agency or to any sworn members of said agencies acting within their official capacities.
  - (2) Any assault weapon which is being used as a movie prop for any motion picture or television program which is being filmed in whole or in part within the City and County of Denver if, prior to such use, the police department is notified in advance in writing of the date, time, location, production schedule and days upon which such use shall take place and the type and serial numbers of the firearms.
  - (3) It shall be an affirmative defense to charges brought under this section that the transportation of an assault weapon:
    - (a) Is through the city by a nonresident who is in legal possession of an assault weapon; or
    - (b) Is by a person carrying a permit issued under subsection (f) and the transportation is for one (1) of the following purposes:
      - i. In aid of the civil power when thereto legally summoned;
      - ii. To a bona fide hunting trip for wild game, or to a legitimate sporting use of such weapon, including shooting matches or target trap or skeet shooting. All weapons carried for such purposes shall be unloaded;
      - iii. While transporting such weapon to or from a place for sale outside the city or for repair. All weapons carried for such purposes shall be unloaded at all times;
      - iv. As a member of the armed forces of a state or of the federal government while engaged in the lawful performance of duty;
      - v. In conjunction with moving personal property, including such weapon, from an old residence to a new residence. All weapons carried for such purposes shall be unloaded at all times.
- (f) *Conditional exception.* Any person over the age of twenty-one (21) years who obtained an assault weapon legally prior to the effective date of this section may obtain a permit to keep, store and possess said assault weapon if:
- (1) Said weapon is properly identifiable and contains its original serial number.

- (2) An application for a permit for each assault weapon is filed with the police department within sixty (60) days of the filing of this section pursuant to such procedures as the department may establish. The application shall contain a description of the firearm that identifies it uniquely, including all identification marks and numbers, the full name, address, date of birth, fingerprints of the owner and the address where such assault weapon will be stored and such other information the department may deem appropriate. The place of storage and possession shall not be changed without notification of the department of the proposed change in location and when said weapon will be transported. The department may charge a fee for registration not to exceed the actual processing costs of the department.
- (3) The department shall issue a permit which shall identify the weapon and where it is to be stored.
- (4) The information required for the registration and permitting of assault weapons shall be treated as confidential and shall not be made available to members of the general public. The council finds that the release of such information would constitute an unwarranted invasion of personal privacy and could endanger the life or safety of persons at the premises where an assault weapon is located. The information on a permit application shall be used by the city only for law enforcement purposes.
- (g) *Sale or transfer unlawful.* It is unlawful to sell or transfer possession of an assault weapon possessed pursuant to subsection (f) within the City and County of Denver.
- (h) *Reserved.*
- (i) *Specific magazine prohibited.* It shall be unlawful to carry, store or otherwise possess a magazine which will hold or may be modified to hold more than fifteen (15) rounds, except that this subsection shall not apply to:
  - (1) Any federal, state or local government agency or to any sworn members of said agencies acting within their official capacities.
  - (2) Any magazine which is being used as a movie prop for any motion picture or television program which is being filmed in whole or in part within the City and County of Denver if, prior to such use, the police department is notified in advance in writing of the date, time, location, production schedule and days upon which such use shall take place and the type and serial numbers of the firearms.
  - (3) It shall be an affirmative defense to charges brought under this section that the transportation of a magazine:
    - (a) Is through the city by a nonresident who is in legal possession of the magazine; or
    - (b) Is by a person carrying a permit issued under subsection (f) and the transportation is for one (1) of the following purposes:
      - i. In aid of the civil power when thereto legally summoned;
      - ii. To a bona fide hunting trip for wild game, or to a legitimate sporting use of such magazine, including shooting matches or target trap or skeet shooting;
      - iii. While transporting such magazine to or from a place for sale outside the city;
      - iv. As a member of the armed forces of a state or of the federal government while engaged in the lawful performance of duty;
      - v. In conjunction with moving personal property, including such magazine, from an old residence to a new residence.
- (j) *Bump stock prohibited.* It shall be unlawful to sell, carry, store, or otherwise possess a bump stock.
- (k) *Penalty.* Any person, firm or corporation who is convicted of violating any provision of this section shall be punished by a fine of not less than one hundred dollars (\$100.00) or more than nine hundred ninety-nine dollars (\$999.00) and a term of incarceration of not less than ten (10) days nor more than one hundred eighty (180) days.
- (l) *Violation; disposition.* Upon a conviction of violating any provision of this section, the weapon shall be confiscated and destroyed under section 38-120, disposition of confiscated weapons.

(Ord. No. 669-89, § 1, 11-6-89; Ord. No. 719-89, § 1, 11-27-89; Ord. No. 1058-96, § 2, 12-9-96; Ord. No. 38-07, § 6, 1-22-07; Ord. No. 1400-17, §§ 1—3, 1-22-18)

## Chapter 193. Firearms and Ammunition

### Article III. Firearms

#### § 193-15. Assault weapons.

A. As used herein, "assault weapon" includes any of the following or their copies:

(1) Pistols:

Bushmaster Firearms Company auto pistol  
Calico Model 100-P auto pistol  
Federal Engineering Corporation XP 450, XP 900  
Holmes Firearms MP-83, MP-22 assault pistols  
Intratec Tec-9 Auto, Tec-9M, Scorpion auto pistols  
Israeli Military Industries UZI pistol  
Iver Johnson Enforcer Model 300 auto  
Ingram or S.W.D. MAC 10, MAC 11  
Spectre double-action auto pistol  
Ruger Mini 14

(2) Rifles and shotguns by manufacturers in the United States:

Auto-Ordinance Corporation Thompson M1, Mix, 27 A-1  
Thompson A-1 Thompson Deluxe, 1927 A5  
Colt AR-15A2-Delta H-Bar, AR-15A2 H-Bar  
Federal Engineering Corporation XC-900, XC-450 auto carbines  
Springfield Armory Inc. BM-59, SAR-48  
S.W.D. Street Sweeper shotgun  
Weaver Arms Corporation nighthawk

(3) Rifles and shotguns by manufacturers outside the United States:

Avtomat Kalashnikovs manufactured or imported by American Arms, Bushmaster Firearms, Daewoo, Mitchell, Norinco and Poly Technologies  
Beretta AR-70 Sporter rifle  
Fabrique National FN, FNC rifle  
Franchi LAW 12 auto, SPAS 12 pump/auto shotguns  
Heckler and Koch HK 91, 93, 94 rifles  
Israeli Military Industries Galil Rifles, UZI carbines  
Steyr Daimler-Pusch A.U.G. autoloading rifle

Striker 12 shotgun

Valmet M-76 standard rifle, M78 semi-auto

- (4) Any other weapon to be subsequently designated by law.
- B. A copy of any of the weapons listed in Subsection **A(1), (2) and (3)** of this section shall include any other model by the same manufacturer with the same action design having slight modifications or enhancements, provided that such weapon as modified or enhanced employs only ammunition of more than .22 caliber rimfire; any weapon with an action design identical or nearly identical to any of the listed weapons which has been designed from, renamed, renumbered or patterned after any of the listed weapons regardless of the manufacturer or country of origin, provided that such weapon employs only ammunition of more than .22 caliber rimfire; or any weapon which has been manufactured and sold by another company under a licensing agreement to manufacture or sell a weapon identical or nearly identical to any of the listed weapons regardless of the company or production or country of origin, provided that such weapon employs only ammunition of more than .22 caliber rimfire.
- C. "Assault weapon" does not include weapons that do not use cartridges, manually operated bolt-action weapons, lever-action weapons, slide-action weapons, single-shot weapons, multiple-barrel weapons, revolving-cylinder weapons except shotguns, semiautomatic weapons that use exclusively a rotary Mannlicher-style magazine, any antique firearm as defined in Article 265 of the Penal Law or any assault weapon which has been modified either to render it permanently inoperable or permanently make it a device no longer defined as an assault weapon.



## Chapter 180. Firearms, Arrows and Other Weapons

### Article I. Firearms and Arrows

#### § 180-1. Firearms, shotguns, rifles and other dangerous weapons.

- A. Purpose and intent. The City of Buffalo finds that violent crime is a serious problem in the City and firearms and other dangerous weapons are frequently used in the commission of crimes, particularly homicides and assaults. The possession of such weapons also often leads to accidental deaths and injuries. The possession and use of assault weapons and ammunition-feeding devices for criminal purposes is increasing and poses a serious danger to public safety. The use of weapons by persons under the influence of drugs and/or alcohol can readily lead to serious injury or death. The possession of weapons in public facilities and places also poses a serious danger to public safety. The possession of toy or imitation weapons which substantially duplicate actual weapons poses a danger to the person possessing the weapon and to others. In order to promote and protect the health, safety and welfare of the public, the City of Buffalo finds it necessary to place restrictions upon the possession and use of such weapons. The restrictions imposed by this section are intended to be in addition to restrictions found in state law and are not intended to conflict with state law provisions.
- B. Definitions. As used in this section, the following terms shall have the meanings indicated:

##### **AMMUNITION**

Explosives suitable to be fired from a firearm, machine gun, pistol, revolver, rifle, shotgun, assault weapon or other dangerous weapon.

##### **AMMUNITION-FEEDING DEVICE**

Magazines, belts, feedstrips, drums or clips capable of being attached to or utilized with any center-fire rifle, shotgun or pistol which employs the force of the expanding gases from a discharging cartridge to chamber a fresh round after each single pull of the trigger which, in the case of a rifle or shotgun, holds in excess of five cartridges, or in the case of a pistol holds in excess of 17 cartridges.

##### **ASSAULT WEAPON**

- (1) Any center-fire rifle or shotgun which employs the force of the expanding gases from a discharging cartridge to chamber a fresh round after each single pull of the trigger, and which is loaded or capable of being loaded with a combination of more than six cartridges in the ammunition-feeding device and chamber combined. For the purposes of this section, a weapon is capable of being loaded if it is possessed by one who, at the same time, possesses:
- (a) In the case of a rifle, a fixed or detachable ammunition feeding device which is attached to or utilized with or capable of being attached to or utilized with such rifle and which has a capacity of more than five cartridges; or
- (b) In the case of a shotgun, an ammunition-feeding device which is attached to or utilized with or capable of being attached to or utilized with such shotgun and which has a capacity of more than five cartridges.
- (2) A center-fire rifle or shotgun which employs the force of expanding gases from a discharging cartridge to chamber a fresh round after each single pull of the trigger, and which has:

- (a) A flash suppressor attached to the weapon reducing muzzle flash;
  - (b) A grenade launcher;
  - (c) A sighting device making a target visible at night;
  - (d) A barrel jacket surrounding all or a portion of the barrel, to dissipate heat therefrom; or
  - (e) A multi-burst trigger activator.
- (3) Any stockless pistol grip shotgun.
- (4) For purposes of this section, the term "assault weapon" shall not include any of the following:
- (a) Any weapon which has been modified to render it permanently inoperable or permanently make it a device no longer defined as an "assault" weapon.
  - (b) Weapons that do not use cartridges or shells.
  - (c) Manually operated bolt-action weapons, lever-action weapons, slide-action weapons or single-shot weapons.
  - (d) Multiple-barrel weapons, revolving-cylinder weapons except shotguns, weapons that use exclusively a rotary Mannlicher-style magazine.
  - (e) Any antique firearm as defined in § 265.00 of the New York State Penal Law or any curio or relic as defined under United States law which is possessed by a licensed collector in accordance with United States law.

**DISPOSE OF**

To dispose of, give away, give, lease, loan, keep for sale, offer, offer for sale, sell, transfer or otherwise dispose of.

**DRUG**

Any substance listed in § 3306 of the Public Health Law of the State of New York.

**DWELLING**

One or more rooms, in a building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons, designed for occupancy by one family for cooking, living and sleeping purposes, as defined in Chapter 511, Zoning, of this Code.

**FIREARM**

Any pistol or revolver, or a shotgun having one or more barrels less than 18 inches in length or any weapon made from a shotgun (whether by alteration, modification or otherwise) if such weapon, as modified, has an overall length of less than 26 inches; or a rifle having one or more barrels less than 16 inches in length or any weapon made from a rifle (whether by alteration, modification or otherwise) if such weapon, as modified, has an overall length of less than 26 inches. For purposes of this definition, the length of a barrel on a shotgun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech or breechlock when closed and when the shotgun or rifle is cocked; the overall length of a weapon made from a shotgun or rifle is the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore. Such definition, except as otherwise indicated, shall include both loaded and unloaded firearms, except that it shall not include any antique firearm as defined in federal or New York State law or any curio or relic as defined under United States law which is possessed by a licensed collector in accordance with United States law.

**LOCKING DEVICE**

A design adaptation or attachable accessory that will prevent the use of the firearm, rifle or shotgun by an unauthorized user, and includes but is not limited to a trigger lock, which prevents the pulling of the trigger without the use of a key, or a combination handle, which prevents the use of the firearm, rifle or shotgun without the alignment of the combination tumblers.

### **POSSESS**

Have physical possession or otherwise to exercise dominion or control over. The presence in an automobile of any firearm, rifle or shotgun which is openly visible is presumptive evidence of its possession by all persons occupying such automobile at the time such firearm, rifle or shotgun is found, except if such firearm, rifle or shotgun is found in a vehicle for hire.

### **PUBLIC PLACE**

Any street, including the sidewalk portion thereof, park, playground, recreation area, cemetery or lot owned, leased, operated or controlled by or on behalf of any government, municipality or public authority or corporation within the boundaries of the City, which is generally accessible to the public, except grounds used for educational purposes.

### **PUBLIC FACILITY**

Any building or facility owned, leased, operated or controlled by or on behalf of any government, municipality or public authority or corporation within the boundaries of the City, except buildings or facilities used for educational purposes.

### **RIFLE**

A weapon designed or redesigned, made or remade and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

### **SHOTGUN**

A weapon designed or redesigned, made or remade and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

- C. No person shall possess a loaded or unloaded firearm, rifle, shotgun or air gun, or a dagger, dangerous knife, dirk, razor or stiletto, in a public place or public facility in the City. This prohibition shall not apply to:
- (1) A police officer or peace officer authorized to possess the same.
  - (2) A government employee or licensed security guard authorized or required by employment or office to possess the same while acting within the scope of such employment.
  - (3) A person in the military service of the State of New York or the United States when duly authorized to possess the same.
  - (4) A person transporting a rifle or shotgun in a motor vehicle in the City in accordance with the provisions of § 11-0931, Subdivision 2, of the New York State Environmental Conservation Law, or otherwise transporting an unloaded rifle, shotgun or air gun in the City, provided that the same is completely enclosed or contained in a nontransparent carrying case and either:
    - (a) Said carrying case is locked; or
    - (b) A locking device is attached to the weapon and locked in a manner so as to prevent the weapon from being fired.
  - (5) An authorized person who, for the purpose of shooting practice, possesses a weapon at an established target range in a public place other than a park or public facility.

- (6) A person voluntarily surrendering the same in accordance with the provisions of Section 265.20 of the Penal law.
  - (7) Possession of a firearm by a person licensed to carry a firearm pursuant to § 400.00 of the Penal Law or possession or transportation by a gunsmith or dealer in firearms in accordance with a license issued by the State of New York or the United States, except that this subsection shall not apply in a park or a public facility other than a parking garage.
- D. No person shall store a firearm, rifle, shotgun or air gun in a dwelling in the City unless said firearm, rifle, shotgun or air gun is completely enclosed or contained in a nontransparent locked carrying case or in a locked gun rack, cabinet, closet or safe, or a locking device is attached to the weapon and locked in a manner so as to prevent the weapon from being fired. This requirement shall not apply to a rifle, shotgun or licensed firearm carried on the body of the owner or within such close proximity of the owner that the owner can retrieve it as quickly and easily as if it were carried on the owner's body.
- E. No person shall dispose of any firearm, rifle, shotgun, air gun or ammunition in the City. This prohibition shall not apply to:
- (1) A gunsmith or dealer in firearms duly licensed by the State of New York or the United States.
  - (2) A person disposing of the same to a gunsmith or dealer in firearms duly licensed by the State of New York or the United States.
  - (3) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law.
  - (4) A person disposing of a licensed firearm in accordance with law.
  - (5) Disposition by intestate or testamentary bequest.
  - (6) A person disposing of a rifle, shotgun, air gun or ammunition to a family member.
- F. No person shall possess an assault weapon or an ammunition-feeding device in the City. This prohibition shall not apply to:
- (1) A police officer or peace officer authorized to possess the same.
  - (2) A person in the military service of the State of New York or the United States when duly authorized to possess the same.
  - (3) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal law.
  - (4) A gunsmith or dealer in firearms duly licensed by the State of New York or the United States for weapons to be used by police officers or persons in the military service or for delivery outside of the City.
- G. No person shall dispose of an assault weapon or ammunition-feeding device in the City. This prohibition shall not apply to:
- (1) A person voluntarily surrendering the same in accordance with the provisions of § 265.20 of the Penal Law.
  - (2) A gunsmith or dealer in firearms duly licensed by the State of New York or the United States for weapons to be used by police offices or persons in the military service or for delivery outside of the City.
- H. No person shall carry a firearm, shotgun, rifle or air gun in the City while such person has 1/10 of 1% or more by weight of alcohol in the person's blood as shown by chemical analysis of the person's blood, breath, urine

or saliva.

- I. No person shall carry a firearm, shotgun, rifle or air gun in the City while in an intoxicated condition.
- J. No person shall carry a firearm, shotgun, rifle or air gun in the City while the person's ability to safely carry such weapon is impaired by the use of a drug.
- K. Any person who carries a firearm, shotgun, rifle or air gun in the City shall be deemed to have given consent to a breath test and a chemical test of the person's breath, blood, urine or saliva for the purpose of determining the alcoholic or drug content of the person's blood, provided that any test is administered at the direction of a police officer having reasonable grounds therefor. A chemical test must be administered within two hours after such person has been placed under arrest for a violation of this section or any other law or ordinance involving the use or possession of a firearm, rifle, shotgun or air gun, or within two hours after a breath test indicates that alcohol has been consumed by such person. Upon the trial of any action arising out of an arrest for a violation of Subsection H, I or J of this section, the court shall admit evidence of the amount of alcohol or drugs in the blood of the person carrying the firearm, shotgun, rifle or air gun as shown by a test administered pursuant to this section. Evidence of a refusal to submit to a chemical test shall be admissible in any trial, proceeding or hearing based upon a violation of such subsections, but only upon a showing that the person was given sufficient warning, in clear and unequivocal language, of the effect of such refusal and the person persisted in such refusal.
- L. Discharge of weapons; permits.
  - (1) No person shall discharge an air gun, shotgun, rifle, assault weapon, machine gun, submachine gun or a firearm of any kind or description in the City, except police officers, peace officers, members of the military and persons holding permits as in this subsection provided.
  - (2) The Commissioner of Police is hereby authorized to grant permits for the discharge of shotguns at clay pigeons at any particular location or for the discharge of weapons at target ranges subject to such restrictions and conditions as the Commissioner may deem necessary. Any person holding such a permit shall obey all the restrictions and conditions contained herein.
- M. Penalties for offenses. A violation of any provision of this section shall be punishable by a fine not to exceed \$1,500 or by imprisonment not to exceed 15 days, or by both such fine and imprisonment.
- N. The provisions of this section are severable, and if any of its provisions shall be held unconstitutional or invalid, the decision of the court shall not affect or impair any of the remaining provisions of the same. It is hereby declared to be the intention of the Council that this section would have been adopted had such unconstitutional or invalid provision not been included herein. If any term or provision of this section shall be declared unconstitutional, invalid or ineffective in whole, or in part, by a court of competent jurisdiction, then to the extent that it is not unconstitutional, invalid or ineffective, such term or provision shall be in force and effect, nor shall such determination be deemed to invalidate the remaining terms or provisions thereof.

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## The New York City Administrative Code

**§ 10-301 Control and regulation of the disposition, purchase and possession of firearms, rifles, shotguns and assault weapons.**

Definitions. Whenever used in this chapter the following terms shall mean and include:

1. "Firearm."

(a) Any pistol or revolver;

(b) a shotgun having one or more barrels less than eighteen inches in length; or

(c) a rifle having one or more barrels less than sixteen inches in length; or

(d) any weapon made from a shotgun or rifle whether by alteration, modification, or otherwise if such weapon as altered, modified, or otherwise has an overall length of less than twenty-six inches. For the purpose of this subdivision the length of the barrel on a shotgun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech, or breechlock when closed and when the shotgun or rifle is cocked; the overall length of a weapon made from a shotgun or rifle is the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore. Firearm does not include an antique firearm. The provisions of this chapter relating to firearms shall not apply to assault weapons except as specifically provided.

2. "Rifle." A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and, even if not designed or redesigned, made or remade, and intended to be fired from the shoulder, is not a firearm as defined in subdivision one of this section, and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each pull of the trigger. The provisions of this chapter relating to rifles shall not apply to assault weapons except as specifically provided.

3. "Shotgun." A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder, and, even if not designed or redesigned, made or remade, and intended to be fired from the shoulder, is not a firearm as defined in subdivision one of this section, and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell, to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger. The provisions of this chapter relating to shotguns shall not apply to assault weapons except as specifically provided.

4. "Gunsmith." Any person, firm, partnership, corporation, or company who engages in the business of repairing, altering, assembling, manufacturing, cleaning, polishing, engraving, or trueing, or who in the course of such business performs any mechanical operation on any rifle, shotgun, firearm, assault weapon or machine gun.

5. "Dealer in firearms." Any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of any pistol or revolver or other firearms which may be concealed upon the person. Dealer in firearms shall not include a wholesale dealer.

6. "Dealer in rifles and shotguns." Any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of any rifle, or shotgun. Dealer in rifles and shotguns shall not include a wholesale dealer.

7. "Ammunition." Explosives suitable to be fired from a firearm, machine gun, pistol, revolver, rifle, shotgun, assault weapon or other dangerous weapon.

8. "Dispose of." To dispose of, give away, give, lease, loan, keep for sale, offer, offer for sale, sell, transfer and otherwise dispose of.

9. "Deface." To remove, deface, cover, alter, or destroy the manufacturer's serial number or any other distinguishing number or identification mark.

10. "Commissioner." The police commissioner of the city of New York or the commissioner's designee.

11. "Permit." The permit for purchase and possession of rifles and shotguns issued by the commissioner.

12. "Certificate." The certificate of registration for possession of rifles and shotguns.

13. "Serious offense." A serious offense as defined in subdivision seventeen of section 265.00 of the penal law.

14. "Business enterprise." Any proprietorship, company, partnership, corporation, association, cooperative, nonprofit organization or other entity engaged or seeking to engage in the activities regulated pursuant to section 10-302 of this chapter.

15. "Semiautomatic." Any firearm, rifle or shotgun that uses part of the energy of a fired cartridge to expel the case of the fired cartridge and load another cartridge into the firing chamber, and which requires a separate pull of the trigger to fire each cartridge.

16. "Assault weapon."

(a) Any semiautomatic centerfire or rimfire rifle or semiautomatic shotgun which has one or more of the following features:

1. folding or telescoping stock or no stock;
2. pistol grip that protrudes conspicuously beneath the action of the weapon;
3. bayonet mount;
4. flash suppressor or threaded barrel designed to accommodate a flash suppressor;
5. barrel shroud;
6. grenade launcher; or

7. modifications of such features, or other features, determined by rule of the commissioner to be particularly suitable for military and not sporting purposes. In addition, the commissioner shall, by rule, designate specific semiautomatic centerfire or rimfire rifles or semiautomatic shotguns, identified by make, model and/or manufacturer's name, as within the definition of assault weapon, if the commissioner determines that such weapons are particularly suitable for military and not sporting purposes. The commissioner shall inspect such specific designated semiautomatic centerfire or rimfire rifles or semiautomatic shotguns at least three times per year, and shall revise or update such designations as he or she deems appropriate.

(b) Any shotgun with a revolving-cylinder magazine.

(c) Any part, or combination of parts, designed or redesigned or intended to readily convert a rifle or shotgun into an assault weapon.

(d) "Assault weapon" shall not include any rifle or shotgun modified to render it permanently inoperative.

17. "Ammunition feeding device." Magazines, belts, feedstrips, drums or clips capable of being attached to or utilized with firearms, rifles, shotguns or assault weapons.

18. "Antique firearm." Any unloaded muzzle loading pistol or revolver with a matchlock, flintlock, percussion cap, or similar type of ignition system, or a pistol or revolver which uses fixed cartridges which are no longer available in the ordinary channels of commercial trade.

19. "Special theatrical dealer." Any person, firm, partnership, corporation or company who possesses assault weapons exclusively for the purpose of leasing such assault weapons to special theatrical permittees within the city and for theatrical purposes outside the city.

20. "Acquire." To gain possession of or title to a weapon through purchase, gift, lease, loan, or otherwise.

[West's Annotated California Codes](#)

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[Part 6. Control of Deadly Weapons \(Refs & Annos\)](#)

[Title 1. Preliminary Provisions \(Refs & Annos\)](#)

[Division 2. Definitions \(Refs & Annos\)](#)

West's Ann.Cal.Penal Code § 16350

§ 16350. Capacity to accept more than 10 rounds defined

Effective: January 1, 2012

[Currentness](#)

As used in [Section 30515](#), “capacity to accept more than 10 rounds” means capable of accommodating more than 10 rounds. The term does not apply to a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

**Credits**

(Added by [Stats.2010, c. 711 \(S.B.1080\)](#), § 6, operative Jan. 1, 2012.)

West's Ann. Cal. Penal Code § 16350, CA PENAL § 16350

Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

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[Title 1. Preliminary Provisions \(Refs & Annos\)](#)

[Division 2. Definitions \(Refs & Annos\)](#)

West's Ann.Cal.Penal Code § 16740

§ 16740. Large-capacity magazine defined

Effective: January 1, 2012

[Currentness](#)

As used in this part, “large-capacity magazine” means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:

- (a) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.
- (b) A .22 caliber tube ammunition feeding device.
- (c) A tubular magazine that is contained in a lever-action firearm.

**Credits**

(Added by [Stats.2010, c. 711 \(S.B.1080\)](#), § 6, operative Jan. 1, 2012.)

West's Ann. Cal. Penal Code § 16740, CA PENAL § 16740

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[Division 2. Definitions \(Refs & Annos\)](#)

West's Ann.Cal.Penal Code § 16890

§ 16890. Magazine defined

Effective: January 1, 2012

[Currentness](#)

As used in [Section 30515](#), “magazine” means any ammunition feeding device.

**Credits**

(Added by [Stats.2010, c. 711 \(S.B.1080\)](#), § 6, [operative Jan. 1, 2012.](#))

West's Ann. Cal. Penal Code § 16890, CA PENAL § 16890

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Chapter 5. Large-Capacity Magazine (Refs & Annos)

Article 1. Rules Governing Large-Capacity Magazines (Refs & Annos)

West's Ann.Cal.Penal Code § 32310

§ 32310. Prohibition on manufacture, import, sale, gift, loan, purchase,  
receipt, or possession of large-capacity magazines; punishment

Effective: November 9, 2016

[Currentness](#)

(a) Except as provided in Article 2 (commencing with [Section 32400](#)) of this chapter and in Chapter 1 (commencing with [Section 17700](#)) of Division 2 of Title 2, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives any large-capacity magazine is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to [subdivision \(h\) of Section 1170](#).

(b) For purposes of this section, “manufacturing” includes both fabricating a magazine and assembling a magazine from a combination of parts, including, but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully functioning large-capacity magazine.

(c) Except as provided in Article 2 (commencing with [Section 32400](#)) of this chapter and in Chapter 1 (commencing with [Section 17700](#)) of Division 2 of Title 2, commencing July 1, 2017, any person in this state who possesses any large-capacity magazine, regardless of the date the magazine was acquired, is guilty of an infraction punishable by a fine not to exceed one hundred dollars (\$100) per large-capacity magazine, or is guilty of a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100) per large-capacity magazine, by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) Any person who may not lawfully possess a large-capacity magazine commencing July 1, 2017 shall, prior to July 1, 2017:

- (1) Remove the large-capacity magazine from the state;
- (2) Sell the large-capacity magazine to a licensed firearms dealer; or
- (3) Surrender the large-capacity magazine to a law enforcement agency for destruction.

**Credits**

(Added by Stats.2010, c. 711 (S.B.1080), § 6, operative Jan. 1, 2012. Amended by Stats.2012, c. 43 (S.B.1023), § 107, eff. June 27, 2012; Stats.2013, c. 728 (A.B.48), § 1; Stats.2016, c. 58 (S.B.1446), § 1, eff. Jan. 1, 2017; Initiative Measure (Prop. 63, § 6.1, approved Nov. 8, 2016, eff. Nov. 9, 2016).)

West's Ann. Cal. Penal Code § 32310, CA PENAL § 32310

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Chapter 5. Large-Capacity Magazine (Refs & Annos)

Article 1. Rules Governing Large-Capacity Magazines (Refs & Annos)

West's Ann.Cal.Penal Code § 32311

§ 32311. Large capacity magazine conversion kits; prohibition on manufacture, import, sale, gift, loan, purchase, or receipt; penalties

Effective: January 1, 2014

[Currentness](#)

(a) Except as provided in Article 2 (commencing with [Section 32400](#)) of this chapter and in Chapter 1 (commencing with [Section 17700](#)) of Division 2 of Title 2, commencing January 1, 2014, any person in this state who knowingly manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives any large capacity magazine conversion kit is punishable by a fine of not more than one thousand dollars (\$1,000) or imprisonment in a county jail not to exceed six months, or by both that fine and imprisonment. This section does not apply to a fully assembled large-capacity magazine, which is governed by [Section 32310](#).

(b) For purposes of this section, a “large capacity magazine conversion kit” is a device or combination of parts of a fully functioning large-capacity magazine, including, but not limited to, the body, spring, follower, and floor plate or end plate, capable of converting an ammunition feeding device into a large-capacity magazine.

**Credits**

(Added by [Stats.2013, c. 728 \(A.B.48\)](#), § 2.)

West's Ann. Cal. Penal Code § 32311, CA PENAL § 32311

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Chapter 5. Large-Capacity Magazine (Refs & Annos)

Article 1. Rules Governing Large-Capacity Magazines (Refs & Annos)

West's Ann.Cal.Penal Code § 32315

§ 32315. Permits for possession, transportation, or sale of large-capacity magazines between licensed individuals and out-of-state clients

Effective: January 1, 2012

[Currentness](#)

Upon a showing that good cause exists, the Department of Justice may issue permits for the possession, transportation, or sale between a person licensed pursuant to [Sections 26700 to 26915](#), inclusive, and an out-of-state client, of large-capacity magazines.

**Credits**

(Added by [Stats.2010, c. 711 \(S.B.1080\)](#), § 6, operative Jan. 1, 2012.)

West's Ann. Cal. Penal Code § 32315, CA PENAL § 32315

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[Chapter 5. Large-Capacity Magazine \(Refs & Annos\)](#)

[Article 1. Rules Governing Large-Capacity Magazines \(Refs & Annos\)](#)

West's Ann.Cal.Penal Code § 32390

§ 32390. Nuisance status of large-capacity magazines

Effective: January 1, 2012

[Currentness](#)

Except as provided in Article 2 (commencing with [Section 32400](#)) of this chapter and in Chapter 1 (commencing with [Section 17700](#)) of Division 2 of Title 2, any large-capacity magazine is a nuisance and is subject to [Section 18010](#).

**Credits**

(Added by [Stats.2010, c. 711 \(S.B.1080\)](#), § 6, operative Jan. 1, 2012.)

West's Ann. Cal. Penal Code § 32390, CA PENAL § 32390

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West's Colorado Revised Statutes Annotated  
Title 18. Criminal Code (Refs & Annos)  
Article 12. Offenses Relating to Firearms and Weapons (Refs & Annos)  
Part 3. Large-Capacity Ammunition Magazines

C.R.S.A. § 18-12-301

§ 18-12-301. Definitions

Effective: July 1, 2013

[Currentness](#)

As used in this part 3, unless the context otherwise requires:

(1) “Bureau” means the Colorado bureau of investigation created and existing pursuant to [section 24-33.5-401, C.R.S.](#)

(2)(a) “Large-capacity magazine” means:

(I) A fixed or detachable magazine, box, drum, feed strip, or similar device capable of accepting, or that is designed to be readily converted to accept, more than fifteen rounds of ammunition;

(II) A fixed, tubular shotgun magazine that holds more than twenty-eight inches of shotgun shells, including any extension device that is attached to the magazine and holds additional shotgun shells; or

(III) A nontubular, detachable magazine, box, drum, feed strip, or similar device that is capable of accepting more than eight shotgun shells when combined with a fixed magazine.

(b) “Large-capacity magazine” does not mean:

(I) A feeding device that has been permanently altered so that it cannot accommodate more than fifteen rounds of ammunition;

(II) An attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition; or

(III) A tubular magazine that is contained in a lever-action firearm.

**Credits**

Added by [Laws 2013, Ch. 48, § 1, eff. July 1, 2013](#).

C. R. S. A. § 18-12-301, CO ST § 18-12-301



Current through the end of the Second Regular Session of the 71st General Assembly (2018)

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West's Colorado Revised Statutes Annotated  
Title 18. Criminal Code (Refs & Annos)  
Article 12. Offenses Relating to Firearms and Weapons (Refs & Annos)  
Part 3. Large-Capacity Ammunition Magazines

C.R.S.A. § 18-12-303

§ 18-12-303. Identification markings for large-capacity magazines--rules

Effective: July 1, 2013

[Currentness](#)

(1) A large-capacity magazine that is manufactured in Colorado on or after July 1, 2013, must include a permanent stamp or marking indicating that the large-capacity magazine was manufactured or assembled after July 1, 2013. The stamp or marking must be legibly and conspicuously engraved or cast upon the outer surface of the large-capacity magazine.

(2) The bureau may promulgate such rules as may be necessary for the implementation of this section, including but not limited to rules requiring a large-capacity magazine that is manufactured on or after July 1, 2013, to bear identifying information in addition to the identifying information described in subsection (1) of this section.

(3) A person who manufactures a large-capacity magazine in Colorado in violation of subsection (1) of this section commits a class 2 misdemeanor and shall be punished in accordance with [section 18-1.3-501](#).

**Credits**

Added by [Laws 2013, Ch. 48, § 1](#), eff. July 1, 2013.

C. R. S. A. § 18-12-303, CO ST § 18-12-303

Current through the end of the Second Regular Session of the 71st General Assembly (2018)

Connecticut General Statutes Annotated

Title 53. Crimes (Refs & Annos)

Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202w

§ 53-202w. Large capacity magazines. Definitions. Sale, transfer or possession prohibited. Exceptions

Effective: June 18, 2013

[Currentness](#)

(a) As used in this section and [section 53-202x](#):

(1) “Large capacity magazine” means any firearm magazine, belt, drum, feed strip or similar device that has the capacity of, or can be readily restored or converted to accept, more than ten rounds of ammunition, but does not include: (A) A feeding device that has been permanently altered so that it cannot accommodate more than ten rounds of ammunition, (B) a .22 caliber tube ammunition feeding device, (C) a tubular magazine that is contained in a lever-action firearm, or (D) a magazine that is permanently inoperable;

(2) “Lawfully possesses”, with respect to a large capacity magazine, means that a person has (A) actual and lawful possession of the large capacity magazine, (B) constructive possession of the large capacity magazine pursuant to a lawful purchase of a firearm that contains a large capacity magazine that was transacted prior to or on April 4, 2013, regardless of whether the firearm was delivered to the purchaser prior to or on April 4, 2013, which lawful purchase is evidenced by a writing sufficient to indicate that (i) a contract for sale was made between the parties prior to or on April 4, 2013, for the purchase of the firearm, or (ii) full or partial payment for the firearm was made by the purchaser to the seller of the firearm prior to or on April 4, 2013, or (C) actual possession under subparagraph (A) of this subdivision, or constructive possession under subparagraph (B) of this subdivision, as evidenced by a written statement made under penalty of false statement on such form as the Commissioner of Emergency Services and Public Protection prescribes; and

(3) “Licensed gun dealer” means a person who has a federal firearms license and a permit to sell firearms pursuant to [section 29-28](#).

(b) Except as provided in this section, on and after April 5, 2013, any person who, within this state, distributes, imports into this state, keeps for sale, offers or exposes for sale, or purchases a large capacity magazine shall be guilty of a class D felony. On and after April 5, 2013, any person who, within this state, transfers a large capacity magazine, except as provided in subsection (f) of this section, shall be guilty of a class D felony.

(c) Except as provided in this section and [section 53-202x](#): (1) Any person who possesses a large capacity magazine on or after January 1, 2014, that was obtained prior to April 5, 2013, shall commit an infraction and be fined not more than ninety dollars for a first offense and shall be guilty of a class D felony for any subsequent offense, and (2) any person who possesses a large capacity magazine on or after January 1, 2014, that was obtained on or after April 5, 2013, shall be guilty of a class D felony.

(d) A large capacity magazine may be possessed, purchased or imported by:

(1) The Department of Emergency Services and Public Protection, police departments, the Department of Correction, the Division of Criminal Justice, the Department of Motor Vehicles, the Department of Energy and Environmental Protection or the military or naval forces of this state or of the United States;

(2) A sworn and duly certified member of an organized police department, the Division of State Police within the Department of Emergency Services and Public Protection or the Department of Correction, a chief inspector or inspector in the Division of Criminal Justice, a salaried inspector of motor vehicles designated by the Commissioner of Motor Vehicles, a conservation officer or special conservation officer appointed by the Commissioner of Energy and Environmental Protection pursuant to [section 26-5](#), or a constable who is certified by the Police Officer Standards and Training Council and appointed by the chief executive authority of a town, city or borough to perform criminal law enforcement duties, for use by such sworn member, inspector, officer or constable in the discharge of such sworn member's, inspector's, officer's or constable's official duties or when off duty;

(3) A member of the military or naval forces of this state or of the United States;

(4) A nuclear facility licensed by the United States Nuclear Regulatory Commission for the purpose of providing security services at such facility, or any contractor or subcontractor of such facility for the purpose of providing security services at such facility;

(5) Any person who is sworn and acts as a policeman on behalf of an armored car service pursuant to section 29-20 in the discharge of such person's official duties; or

(6) Any person, firm or corporation engaged in the business of manufacturing large capacity magazines in this state that manufactures, purchases, tests or transports large capacity magazines in this state for sale within this state to persons specified in subdivisions (1) to (5), inclusive, of this subsection or for sale outside this state, or a federally-licensed firearm manufacturer engaged in the business of manufacturing firearms or large capacity magazines in this state that manufactures, purchases, tests or transports firearms or large capacity magazines in this state for sale within this state to persons specified in subdivisions (1) to (5), inclusive, of this subsection or for sale outside this state.

(e) A large capacity magazine may be possessed by:

(1) A licensed gun dealer;

(2) A gunsmith who is in a licensed gun dealer's employ, who possesses such large capacity magazine for the purpose of servicing or repairing a lawfully possessed large capacity magazine;

(3) A person, firm, corporation or federally-licensed firearm manufacturer described in subdivision (6) of subsection (d) of this section that possesses a large capacity magazine that is lawfully possessed by another person for the purpose of servicing or repairing the large capacity magazine;

(4) Any person who has declared possession of the magazine pursuant to [section 53-202x](#); or

(5) Any person who is the executor or administrator of an estate that includes a large capacity magazine, or the trustee of a trust that includes a large capacity magazine, the possession of which has been declared to the Department of Emergency Services and Public Protection pursuant to [section 53-202x](#), which is disposed of as authorized by the Probate Court, if the disposition is otherwise permitted by this section and [section 53-202x](#).

(f) Subsection (b) of this section shall not prohibit:

(1) The transfer of a large capacity magazine, the possession of which has been declared to the Department of Emergency Services and Public Protection pursuant to [section 53-202x](#), by bequest or intestate succession, or, upon the death of a testator or settlor: (A) To a trust, or (B) from a trust to a beneficiary;

(2) The transfer of a large capacity magazine to a police department or the Department of Emergency Services and Public Protection;

(3) The transfer of a large capacity magazine to a licensed gun dealer in accordance with [section 53-202x](#); or

(4) The transfer of a large capacity magazine prior to October 1, 2013, from a licensed gun dealer, pawnbroker licensed under [section 21-40](#), or consignment shop operator, as defined in [section 21-39a](#), to any person who (A) possessed the large capacity magazine prior to or on April 4, 2013, (B) placed a firearm that such person legally possessed, with the large capacity magazine included or attached, in the possession of such dealer, pawnbroker or operator prior to or on April 4, 2013, pursuant to an agreement between such person and such dealer, pawnbroker or operator for the sale of the firearm to a third person, and (C) is eligible to possess the firearm on the date of such transfer.

(g) If the court finds that a violation of this section is not of a serious nature and that the person charged with such violation (1) will probably not offend in the future, (2) has not previously been convicted of a violation of this section, and (3) has not previously had a prosecution under this section suspended pursuant to this subsection, it may order suspension of prosecution in accordance with the provisions of subsection (h) of [section 29-33](#).

#### Credits

(2013, P.A. 13-3, § 23, eff. April 4, 2013; 2013, P.A. 13-220, § 1, eff. June 18, 2013.)

C. G. S. A. § 53-202w, CT ST § 53-202w

The statutes and Constitution are current through the 2018 February Regular Session of the Connecticut General Assembly.

Connecticut General Statutes Annotated

Title 53. Crimes (Refs & Annos)

Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202x

§ 53-202x. Declaration of possession of large capacity magazine. Regulations

Effective: October 1, 2015

[Currentness](#)

(a) (1) Except as provided in subdivision (2) of this subsection, any person who lawfully possesses a large capacity magazine prior to January 1, 2014, shall apply by January 1, 2014, or, if such person is a member of the military or naval forces of this state or of the United States and is unable to apply by January 1, 2014, because such member is or was on official duty outside of this state, shall apply within ninety days of returning to the state to the Department of Emergency Services and Public Protection to declare possession of such magazine. Such application shall be made on such form or in such manner as the Commissioner of Emergency Services and Public Protection prescribes.

(2) No person who lawfully possesses a large capacity magazine pursuant to [subdivision \(1\), \(2\), \(4\) or \(5\) of subsection \(d\) of section 53-202w](#) shall be required to declare possession of a large capacity magazine pursuant to this section with respect to a large capacity magazine used for official duties, except that any such person who retires or is otherwise separated from service who possesses a large capacity magazine that was purchased or obtained by such person for official use before such person retired or separated from service shall declare possession of the large capacity magazine within ninety days of such retirement or separation from service to the Department of Emergency Services and Public Protection. No person that lawfully possesses a large capacity magazine pursuant to [subdivision \(6\) of subsection \(d\) of section 53-202w](#) shall be required to declare possession of such large capacity magazine.

(b) In addition to the application form prescribed under subsection (a) of this section, the department shall design or amend the application forms for a certificate of possession for an assault weapon under [section 53-202d](#) or for a permit to carry a pistol or revolver under [section 29-28a](#), a long gun eligibility certificate under [section 29-37p](#), an eligibility certificate for a pistol or revolver under [section 29-36f](#) or any renewal of such permit or certificate to permit an applicant to declare possession of a large capacity magazine pursuant to this section upon the same application.

(c) The department may adopt regulations, in accordance with the provisions of chapter 54,<sup>1</sup> to establish procedures with respect to applications under this section. Notwithstanding the provisions of [sections 1-210 and 1-211](#), the name and address of a person who has declared possession of a large capacity magazine shall be confidential and shall not be disclosed, except such records may be disclosed to (1) law enforcement agencies and employees of the United States Probation Office acting in the performance of their duties and parole officers within the Department of Correction acting in the performance of their duties, and (2) the Commissioner of Mental Health and Addiction Services to carry out the provisions of subsection (c) of [section 17a-500](#).

(d) Any person who moves into the state in lawful possession of a large capacity magazine shall, within ninety days, either render the large capacity magazine permanently inoperable, sell the large capacity magazine to a licensed gun dealer or remove the large capacity magazine from this state, except that any person who is a member of the military or naval forces of this state or of the United States, is in lawful possession of a large capacity magazine and has been

transferred into the state after January 1, 2014, may, within ninety days of arriving in the state, apply to the Department of Emergency Services and Public Protection to declare possession of such large capacity magazine.

(e) (1) If an owner of a large capacity magazine transfers the large capacity magazine to a licensed gun dealer, such dealer shall, at the time of delivery of the large capacity magazine, execute a certificate of transfer. For any transfer prior to January 1, 2014, the dealer shall provide to the Commissioner of Emergency Services and Public Protection monthly reports, on such form as the commissioner prescribes, regarding the number of transfers that the dealer has accepted. For any transfer on or after January 1, 2014, the dealer shall cause the certificate of transfer to be mailed or delivered to the Commissioner of Emergency Services and Public Protection. The certificate of transfer shall contain: (A) The date of sale or transfer; (B) the name and address of the seller or transferor and the licensed gun dealer, and their Social Security numbers or motor vehicle operator license numbers, if applicable; (C) the licensed gun dealer's federal firearms license number; and (D) a description of the large capacity magazine.

(2) The licensed gun dealer shall present such dealer's federal firearms license and seller's permit to the seller or transferor for inspection at the time of purchase or transfer.

(3) The Commissioner of Emergency Services and Public Protection shall maintain a file of all certificates of transfer at the commissioner's central office.

(f) Any person who declared possession of a large capacity magazine under this section may possess the large capacity magazine only under the following conditions:

(1) At that person's residence;

(2) At that person's place of business or other property owned by that person, provided such large capacity magazine contains not more than ten bullets;

(3) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets;

(4) While on a target range which holds a regulatory or business license for the purpose of practicing shooting at that target range;

(5) While on the premises of a licensed shooting club;

(6) While transporting the large capacity magazine between any of the places set forth in this subsection, or to any licensed gun dealer, provided (A) such large capacity magazine contains not more than ten bullets, and (B) the large capacity magazine is transported in the manner required for an assault weapon under [subdivision \(2\) of subsection \(a\) of section 53-202f](#); or

(7) Pursuant to a valid permit to carry a pistol or revolver, provided such large capacity magazine (A) is within a pistol or revolver that was lawfully possessed by the person prior to April 5, 2013, (B) does not extend more than one inch below the bottom of the pistol grip, and (C) contains not more than ten bullets.

(g) Any person who violates the provisions of subsection (f) of this section shall be guilty of a class C misdemeanor.

#### Credits

(2013, P.A. 13-3, § 24, eff. April 4, 2013; 2013, P.A. 13-220, § 2, eff. June 18, 2013; 2015, P.A. 15-216, § 8.)

#### Footnotes

1 [C.G.S.A. § 4-166 et seq.](#)

C. G. S. A. § 53-202x, CT ST § 53-202x

The statutes and Constitution are current through the 2018 February Regular Session of the Connecticut General Assembly.



West's District of Columbia Code Annotated 2001 Edition  
Division I. Government of District.  
Title 7. Human Health Care and Safety. (Refs & Annos)  
Subtitle J. Public Safety.  
Chapter 25. Firearms Control.  
Unit A. Firearms Control Regulations.  
Subchapter VI. Possession of Ammunition.

DC ST § 7-2506.01  
Formerly cited as DC ST 1981 § 6-2361

§ 7-2506.01. Persons permitted to possess ammunition.

Effective: April 27, 2013  
[Currentness](#)

(a) No person shall possess ammunition in the District of Columbia unless:

- (1) He is a licensed dealer pursuant to subchapter IV of this unit;
- (2) He is an officer, agent, or employee of the District of Columbia or the United States of America, on duty and acting within the scope of his duties when possessing such ammunition;
- (3) He is the holder of the valid registration certificate for a firearm pursuant to subchapter II of this chapter; except, that no such person shall possess one or more restricted pistol bullets; or
- (4) He holds an ammunition collector's certificate on September 24, 1976; or
- (5) He temporarily possesses ammunition while participating in a firearms training and safety class conducted by a firearms instructor.

(b) No person in the District shall possess, sell, or transfer any large capacity ammunition feeding device regardless of whether the device is attached to a firearm. For the purposes of this subsection, the term “large capacity ammunition feeding device” means a magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition. The term “large capacity ammunition feeding device” shall not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

**Credits**

(Sept. 24, 1976, D.C. Law 1-85, title VI, § 601, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Aug. 2, 1983, D.C. Law 5-19, § 4, 30 DCR 3328; [Mar. 31, 2009, D.C. Law 17-372, § 3\(n\), 56 DCR 1365](#); [Sept. 26, 2012, D.C. Law 19-170, § 2\(n\), 59 DCR 5691](#); [Apr. 27, 2013, D.C. Law 19-295, § 2\(c\), 60 DCR 2623](#).)

West's Hawai'i Revised Statutes Annotated

Division 1. Government

Title 10. Public Safety and Internal Security

Chapter 134. Firearms, Ammunition and Dangerous Weapons

Part I. General Regulations

HRS § 134-8

§ 134-8. Ownership, etc., of automatic firearms, silencers, etc., prohibited; penalties

Currentness

(a) The manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of any of the following is prohibited: assault pistols, except as provided by [section 134-4\(e\)](#); automatic firearms; rifles with barrel lengths less than sixteen inches; shotguns with barrel lengths less than eighteen inches; cannons; mufflers, silencers, or devices for deadening or muffling the sound of discharged firearms; hand grenades, dynamite, blasting caps, bombs, or bombshells, or other explosives; or any type of ammunition or any projectile component thereof coated with teflon or any other similar coating designed primarily to enhance its capability to penetrate metal or pierce protective armor; and any type of ammunition or any projectile component thereof designed or intended to explode or segment upon impact with its target.

(b) Any person who installs, removes, or alters a firearm part with the intent to convert the firearm to an automatic firearm shall be deemed to have manufactured an automatic firearm in violation of subsection (a).

(c) The manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of detachable ammunition magazines with a capacity in excess of ten rounds which are designed for or capable of use with a pistol is prohibited. This subsection shall not apply to magazines originally designed to accept more than ten rounds of ammunition which have been modified to accept no more than ten rounds and which are not capable of being readily restored to a capacity of more than ten rounds.

(d) Any person violating subsection (a) or (b) shall be guilty of a class C felony and shall be imprisoned for a term of five years without probation. Any person violating subsection (c) shall be guilty of a misdemeanor except when a detachable magazine prohibited under this section is possessed while inserted into a pistol in which case the person shall be guilty of a class C felony.

**Credits**

Laws 1988, ch. 275, § 2; Laws 1989, ch. 261, § 6; Laws 1989, ch. 263, § 4; [Laws 1992, ch. 286, §§ 3, 4](#).

H R S § 134-8, HI ST § 134-8

Current through Act 220 of the 2018 Regular Session, pending classification of undesignated material and text revision by the revisor of statutes. For research tips relating to newly added undesignated material, see Searching and Fields under scope.

West's Annotated Code of Maryland  
Criminal Law (Refs & Annos)  
Title 4. Weapon Crimes  
Subtitle 3. Assault Weapons and Detachable Magazines (Refs & Annos)

MD Code, Criminal Law, § 4-305  
Formerly cited as MD CODE Art. 27, § 36H-5

§ 4-305. Detachable magazines--Prohibited

Effective: October 1, 2013

[Currentness](#)

**Scope**

(a) This section does not apply to:

(1) a .22 caliber rifle with a tubular magazine; or

(2) a law enforcement officer or a person who retired in good standing from service with a law enforcement agency of the United States, the State, or any law enforcement agency in the State.

**Prohibited**

(b) A person may not manufacture, sell, offer for sale, purchase, receive, or transfer a detachable magazine that has a capacity of more than 10 rounds of ammunition for a firearm.

**Credits**

Added by [Acts 2002, c. 26, § 2, eff. Oct. 1, 2002](#). Amended by [Acts 2013, c. 427, § 1, eff. Oct. 1, 2013](#).

**Formerly** Art. 27, § 36H-5.

MD Code, Criminal Law, § 4-305, MD CRIM LAW § 4-305

Current through all legislation from the 2018 Regular Session of the General Assembly

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XX. Public Safety and Good Order (Ch. 133-148a)

Chapter 140. Licenses (Refs & Annos)

M.G.L.A. 140 § 121

§ 121. Firearms sales; definitions; antique firearms; application of law; exceptions

Effective: August 17, 2018

[Currentness](#)

<[ Introductory paragraph of first paragraph effective until  
August 17, 2018. For text effective August 17, 2018, see below.]>

As used in [sections 122 to 131Q](#), inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:--

<[ Introductory paragraph of first paragraph as amended by 2018, 123, [Sec. 1](#) effective  
August 17, 2018. See 2018, 123, [Sec. 18](#). For text effective until August 17, 2018, see above.]>

As used in [sections 122 to 131Y](#), inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:--

“Ammunition”, cartridges or cartridge cases, primers (igniter), bullets or propellant powder designed for use in any firearm, rifle or shotgun. The term “ammunition” shall also mean tear gas cartridges.

“Assault weapon”, shall have the same meaning as a semiautomatic assault weapon as defined in the federal Public Safety and Recreational Firearms Use Protection Act, [18 U.S.C. section 921\(a\)\(30\)](#) as appearing in such section on September 13, 1994, and shall include, but not be limited to, any of the weapons, or copies or duplicates of the weapons, of any caliber, known as: (i) Avtomat Kalashnikov (AK) (all models); (ii) Action Arms Israeli Military Industries UZI and Galil; (iii) Beretta Ar70 (SC-70); (iv) Colt AR-15; (v) Fabrique National FN/FAL, FN/LAR and FNC; (vi) SWD M-10, M-11, M-11/9 and M-12; (vi) Steyr AUG; (vii) INTRATEC TEC-9, TEC-DC9 and TEC-22; and (viii) revolving cylinder shotguns, such as, or similar to, the Street Sweeper and Striker 12; provided, however, that the term assault weapon shall not include: (i) any of the weapons, or replicas or duplicates of such weapons, specified in appendix A to [18 U.S.C. section 922](#) as appearing in such appendix on September 13, 1994, as such weapons were manufactured on October 1, 1993; (ii) any weapon that is operated by manual bolt, pump, lever or slide action; (iii) any weapon that has been rendered permanently inoperable or otherwise rendered permanently unable to be designated a semiautomatic assault weapon; (iv) any weapon that was manufactured prior to the year 1899; (v) any weapon that is an antique or relic, theatrical prop or other weapon that is not capable of firing a projectile and which is not intended for use as a functional weapon and cannot be readily modified through a combination of available parts into an operable assault weapon; (vi) any semiautomatic rifle that cannot accept a detachable magazine that holds more than five rounds of ammunition; or (vii) any semiautomatic shotgun that cannot hold more than five rounds of ammunition in a fixed or detachable magazine.

<[ Definition of “Bump stock” in first paragraph applicable as provided by 2017, 110, [Sec. 53](#).]>

“Bump stock”, any device for a weapon that increases the rate of fire achievable with such weapon by using energy from the recoil of the weapon to generate a reciprocating action that facilitates repeated activation of the trigger.

“Conviction”, a finding or verdict of guilt or a plea of guilty, whether or not final sentence is imposed.

<[ Definition of “Court” inserted following definition of “Conviction” in first paragraph by 2018, 123, [Sec. 2](#) effective August 17, 2018. See 2018, 123, [Sec. 18](#).]>

“Court”, as used in [sections 131R to 131Y](#), inclusive, the division of the district court department or the Boston municipal court department of the trial court having jurisdiction in the city or town in which the respondent resides.

“Deceptive weapon device”, any device that is intended to convey the presence of a rifle, shotgun or firearm that is used in the commission of a violent crime, as defined in this section, and which presents an objective threat of immediate death or serious bodily harm to a person of reasonable and average sensibility.

<[ Definitions of “Extreme risk protection order” and “Family or household member” inserted following definition of “Deceptive weapon device” in first paragraph by 2018, 123, [Sec. 3](#) effective August 17, 2018. See 2018, 123, [Sec. 18](#).]>

“Extreme risk protection order”, an order by the court ordering the immediate suspension and surrender of any license to carry firearms or firearm identification card which the respondent may hold and ordering the respondent to surrender all firearms, rifles, shotguns, machine guns, weapons or ammunition which the respondent then controls, owns or possesses; provided, however, that an extreme risk protection order shall be in effect for up to 1 year from the date of issuance and may be renewed upon petition.

“Family or household member”, a person who: (i) is or was married to the respondent; (ii) is or was residing with the respondent in the same household; (iii) is or was related by blood or marriage to the respondent; (iv) has or is having a child in common with the respondent, regardless of whether they have ever married or lived together; (v) is or has been in a substantive dating relationship with the respondent; or (vi) is or has been engaged to the respondent.

<[ Definition of “Firearm” in first paragraph effective until July 3, 2018. For text effective July 3, 2018, see below.]>

“Firearm”, a pistol, revolver or other weapon of any description, loaded or unloaded, from which a shot or bullet can be discharged and of which the length of the barrel or barrels is less than 16 inches or 18 inches in the case of a shotgun as originally manufactured; provided, however, that the term firearm shall not include any weapon that is: (i) constructed in a shape that does not resemble a handgun, short-barreled rifle or short-barreled shotgun including, but not limited to, covert weapons that resemble key-chains, pens, cigarette-lighters or cigarette-packages; or (ii) not detectable as a weapon or potential weapon by x-ray machines commonly used at airports or walk- through metal detectors.

<[ Definition of “Firearm” in first paragraph as amended by 2018, 123, [Sec. 4](#) effective July 3, 2018. For text effective until July 3, 2018, see above.]>

“Firearm”, a stun gun or a pistol, revolver or other weapon of any description, loaded or unloaded, from which a shot or bullet can be discharged and of which the length of the barrel or barrels is less than 16 inches or 18 inches in the case of a shotgun as originally manufactured; provided, however, that the term firearm shall not include any weapon that is: (i)

constructed in a shape that does not resemble a handgun, short-barreled rifle or short-barreled shotgun including, but not limited to, covert weapons that resemble key-chains, pens, cigarette-lighters or cigarette-packages; or (ii) not detectable as a weapon or potential weapon by x-ray machines commonly used at airports or walk- through metal detectors.

“Gunsmith”, any person who engages in the business of repairing, altering, cleaning, polishing, engraving, blueing or performing any mechanical operation on any firearm, rifle, shotgun or machine gun.

“Imitation firearm”, any weapon which is designed, manufactured or altered in such a way as to render it incapable of discharging a shot or bullet.

“Large capacity feeding device”, (i) a fixed or detachable magazine, box, drum, feed strip or similar device capable of accepting, or that can be readily converted to accept, more than ten rounds of ammunition or more than five shotgun shells; or (ii) a large capacity ammunition feeding device as defined in the federal Public Safety and Recreational Firearms Use Protection Act, [18 U.S.C. section 921\(a\)\(31\)](#) as appearing in such section on September 13, 1994. The term “large capacity feeding device” shall not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber ammunition.

“Large capacity weapon”, any firearm, rifle or shotgun: (i) that is semiautomatic with a fixed large capacity feeding device; (ii) that is semiautomatic and capable of accepting, or readily modifiable to accept, any detachable large capacity feeding device; (iii) that employs a rotating cylinder capable of accepting more than ten rounds of ammunition in a rifle or firearm and more than five shotgun shells in the case of a shotgun or firearm; or (iv) that is an assault weapon. The term “large capacity weapon” shall be a secondary designation and shall apply to a weapon in addition to its primary designation as a firearm, rifle or shotgun and shall not include: (i) any weapon that was manufactured in or prior to the year 1899; (ii) any weapon that operates by manual bolt, pump, lever or slide action; (iii) any weapon that is a single-shot weapon; (iv) any weapon that has been modified so as to render it permanently inoperable or otherwise rendered permanently unable to be designated a large capacity weapon; or (v) any weapon that is an antique or relic, theatrical prop or other weapon that is not capable of firing a projectile and which is not intended for use as a functional weapon and cannot be readily modified through a combination of available parts into an operable large capacity weapon.

“Length of barrel” or “barrel length”, that portion of a firearm, rifle, shotgun or machine gun through which a shot or bullet is driven, guided or stabilized and shall include the chamber.

“Licensing authority”, the chief of police or the board or officer having control of the police in a city or town, or persons authorized by them.

<[ Definition of “Machine gun” in first paragraph applicable as provided by 2017, 110, [Sec. 53](#).]>

“Machine gun”, a weapon of any description, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged by one continuous activation of the trigger, including a submachine gun; provided, however, that “machine gun” shall include bump stocks and trigger cranks.

<[ Definitions of “Petition” and “Petitioner” inserted following definition of “Machine gun” in first paragraph by 2018, 123, [Sec. 5](#) effective August 17, 2018. See 2018, 123, [Sec. 18](#).]>

“Petition”, a request filed with the court by a petitioner for the issuance or renewal of an extreme risk protection order.

“Petitioner”, the family or household member, or the licensing authority of the municipality where the respondent resides, filing a petition.

“Purchase” and “sale” shall include exchange; the word “purchaser” shall include exchanger; and the verbs “sell” and “purchase”, in their different forms and tenses, shall include the verb exchange in its appropriate form and tense.

<[ Definition of “Respondent” inserted following definition of “Purchase” in first paragraph by 2018, 123, [Sec. 6](#) effective August 17, 2018. See 2018, 123, [Sec. 18](#).]>

“Respondent”, the person identified as the respondent in a petition against whom an extreme risk protection order is sought.

“Rifle”, a weapon having a rifled bore with a barrel length equal to or greater than 16 inches and capable of discharging a shot or bullet for each pull of the trigger.

“Sawed-off shotgun”, any weapon made from a shotgun, whether by alteration, modification or otherwise, if such weapon as modified has one or more barrels less than 18 inches in length or as modified has an overall length of less than 26 inches.

“Semiautomatic”, capable of utilizing a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and requiring a separate pull of the trigger to fire each cartridge.

“Shotgun”, a weapon having a smooth bore with a barrel length equal to or greater than 18 inches with an overall length equal to or greater than 26 inches, and capable of discharging a shot or bullet for each pull of the trigger.

<[ Definitions of “Stun gun” and “Substantive dating relationship” inserted following definition of “Shotgun” in first paragraph by 2018, 123, [Sec. 7](#) effective July 3, 2018.]>

“Stun gun”, a portable device or weapon, regardless of whether it passes an electrical shock by means of a dart or projectile via a wire lead, from which an electrical current, impulse, wave or beam that is designed to incapacitate temporarily, injure or kill may be directed.

“Substantive dating relationship”, a relationship as determined by the court after consideration of the following factors: (i) the length of time of the relationship; (ii) the type of relationship; (iii) the frequency of interaction between the parties; and (iv) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.

<[ Definition of “Trigger crank” in first paragraph applicable as provided by 2017, 110, [Sec. 53](#).]>

“Trigger crank”, any device to be attached to a weapon that repeatedly activates the trigger of the weapon through the use of a lever or other part that is turned in a circular motion; provided, however, that “trigger crank” shall not include any weapon initially designed and manufactured to fire through the use of a crank or lever.

“Violent crime”, shall mean any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or possession of a deadly weapon that would be punishable by imprisonment for such term if committed by an adult, that: (i) has as an element the use, attempted use or threatened use of physical force or a deadly weapon against the person of another; (ii) is burglary, extortion, arson or kidnapping; (iii) involves the use of explosives; or (iv) otherwise involves conduct that presents a serious risk of physical injury to another.

“Weapon”, any rifle, shotgun or firearm.

Where the local licensing authority has the power to issue licenses or cards under this chapter, but no such licensing authority exists, any resident or applicant may apply for such license or firearm identification card directly to the colonel of state police and said colonel shall for this purpose be the licensing authority.

The provisions of [sections 122 to 129D](#), inclusive, and [sections 131, 131A, 131B and 131E](#) shall not apply to:

(A) any firearm, rifle or shotgun manufactured in or prior to the year 1899;

(B) any replica of any firearm, rifle or shotgun described in clause (A) if such replica: (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; and

(C) manufacturers or wholesalers of firearms, rifles, shotguns or machine guns.

#### Credits

Amended by St.1934, c. 359, § 1; St.1957, c. 688, § 4; St.1959, c. 296, § 1; St.1960, c. 186; St.1968, c. 737, § 1; St.1969, c. 799, § 1; St.1971, c. 456, § 1; St.1973, c. 892, § 1; St.1983, c. 516, § 1; St.1984, c. 116, § 1; [St.1989, c. 433](#); [St.1990, c. 511, § 1](#); [St.1996, c. 151, §§ 300, 301](#); [St.1998, c. 180, § 8](#); [St.1999, c. 1, § 1](#); [St.2004, c. 150, §§ 1 to 3, eff. Sept. 13, 2004](#); [St.2014, c. 284, §§ 19, eff. Jan. 1, 2015](#); [St.2014, c. 284, §§ 20, 21, eff. Aug. 13, 2014](#); [St.2017, c. 110, §§ 18 to 20, eff. Feb. 1, 2018](#); [St.2018, c. 123, §§ 1 to 3, 5, 6, eff. Aug. 17, 2018](#); [St.2018, c. 123, §§ 4, 7, eff. July 3, 2018](#).

M.G.L.A. 140 § 121, MA ST 140 § 121

Current through Chapter 207, and sections 19 and 21 of Chapter 228 of the 2018 2nd Annual Session



Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XX. Public Safety and Good Order (Ch. 133-148a)

Chapter 140. Licenses (Refs & Annos)

M.G.L.A. 140 § 131M

§ 131M. Assault weapon or large capacity feeding device not lawfully  
possessed on September 13, 1994; sale, transfer or possession; punishment

Effective: August 13, 2014

[Currenttiness](#)

No person shall sell, offer for sale, transfer or possess an assault weapon or a large capacity feeding device that was not otherwise lawfully possessed on September 13, 1994. Whoever not being licensed under the provisions of [section 122](#) violates the provisions of this section shall be punished, for a first offense, by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor more than ten years, or by both such fine and imprisonment, and for a second offense, by a fine of not less than \$5,000 nor more than \$15,000 or by imprisonment for not less than five years nor more than 15 years, or by both such fine and imprisonment.

The provisions of this section shall not apply to: (i) the possession by a law enforcement officer; or (ii) the possession by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving such a weapon or feeding device from such agency upon retirement.

**Credits**

Added by [St.1998, c. 180, § 47](#). Amended by [St.2014, c. 284, § 65, eff. Aug. 13, 2014](#).

M.G.L.A. 140 § 131M, MA ST 140 § 131M

Current through Chapter 207, and sections 19 and 21 of Chapter 228 of the 2018 2nd Annual Session

## New Jersey Statutes Annotated

## Title 2c. The New Jersey Code of Criminal Justice (Refs &amp; Annos)

## Subtitle 2. Definition of Specific Offenses

## Part 5. Offenses Against Public Order, Health and Decency

## Chapter 39. Firearms, Other Dangerous Weapons and Instruments of Crime (Refs &amp; Annos)

N.J.S.A. 2C:39-1

2C:39-1. Definitions

Effective: June 13, 2018

[Currentness](#)

Definitions. The following definitions apply to this chapter and to chapter 58:

a. “Antique firearm” means any rifle or shotgun and “antique cannon” means a destructive device defined in paragraph (3) of subsection c. of this section, if the rifle, shotgun or destructive device, as the case may be, is incapable of being fired or discharged, or which does not fire fixed ammunition, regardless of date of manufacture, or was manufactured before 1898 for which cartridge ammunition is not commercially available, and is possessed as a curiosity or ornament or for its historical significance or value.

b. “Deface” means to remove, deface, cover, alter or destroy the name of the maker, model designation, manufacturer's serial number or any other distinguishing identification mark or number on any firearm.

c. “Destructive device” means any device, instrument or object designed to explode or produce uncontrolled combustion, including (1) any explosive or incendiary bomb, mine or grenade; (2) any rocket having a propellant charge of more than four ounces or any missile having an explosive or incendiary charge of more than one-quarter of an ounce; (3) any weapon capable of firing a projectile of a caliber greater than 60 caliber, except a shotgun or shotgun ammunition generally recognized as suitable for sporting purposes; (4) any Molotov cocktail or other device consisting of a breakable container containing flammable liquid and having a wick or similar device capable of being ignited. The term does not include any device manufactured for the purpose of illumination, distress signaling, line-throwing, safety or similar purposes.

d. “Dispose of” means to give, give away, lease, loan, keep for sale, offer, offer for sale, sell, transfer, or otherwise transfer possession.

e. “Explosive” means any chemical compound or mixture that is commonly used or is possessed for the purpose of producing an explosion and which contains any oxidizing and combustible materials or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion or by detonation of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects. The term shall not include small arms ammunition, or explosives in the form prescribed by the official United States Pharmacopoeia.

f. “Firearm” means any handgun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile

or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

g. “Firearm silencer” means any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearm to be silent, or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearm.

h. “Gravity knife” means any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force.

i. “Machine gun” means any firearm, mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir, belt or other means of storing and carrying ammunition which can be loaded into the firearm, mechanism or instrument and fired therefrom. A machine gun also shall include, without limitation, any firearm with a trigger crank attached.

j. “Manufacturer” means any person who receives or obtains raw materials or parts and processes them into firearms or finished parts of firearms, except a person who exclusively processes grips, stocks and other nonmetal parts of firearms. The term does not include a person who repairs existing firearms or receives new and used raw materials or parts solely for the repair of existing firearms.

k. “Handgun” means any pistol, revolver or other firearm originally designed or manufactured to be fired by the use of a single hand.

l. “Retail dealer” means any person including a gunsmith, except a manufacturer or a wholesale dealer, who sells, transfers or assigns for a fee or profit any firearm or parts of firearms or ammunition which he has purchased or obtained with the intention, or for the purpose, of reselling or reassigning to persons who are reasonably understood to be the ultimate consumers, and includes any person who is engaged in the business of repairing firearms or who sells any firearm to satisfy a debt secured by the pledge of a firearm.

m. “Rifle” means any firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire a single projectile through a rifled bore for each single pull of the trigger.

n. “Shotgun” means any firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shots or a single projectile for each pull of the trigger, or any firearm designed to be fired from the shoulder which does not fire fixed ammunition.

o. “Sawed-off shotgun” means any shotgun having a barrel or barrels of less than 18 inches in length measured from the breech to the muzzle, or a rifle having a barrel or barrels of less than 16 inches in length measured from the breech to the muzzle, or any firearm made from a rifle or a shotgun, whether by alteration, or otherwise, if such firearm as modified has an overall length of less than 26 inches.

p. "Switchblade knife" means any knife or similar device which has a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.

q. "Superintendent" means the Superintendent of the State Police.

r. "Weapon" means anything readily capable of lethal use or of inflicting serious bodily injury. The term includes, but is not limited to, all (1) firearms, even though not loaded or lacking a clip or other component to render them immediately operable; (2) components which can be readily assembled into a weapon; (3) gravity knives, switchblade knives, daggers, dirks, stilettos, or other dangerous knives, billies, blackjacks, bludgeons, metal knuckles, sandclubs, slingshots, cesti or similar leather bands studded with metal filings or razor blades imbedded in wood; and (4) stun guns; and any weapon or other device which projects, releases, or emits tear gas or any other substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air.

s. "Wholesale dealer" means any person, except a manufacturer, who sells, transfers, or assigns firearms, or parts of firearms, to persons who are reasonably understood not to be the ultimate consumers, and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms, in furtherance of such purpose, except that it shall not include those persons dealing exclusively in grips, stocks and other nonmetal parts of firearms.

t. "Stun gun" means any weapon or other device which emits an electrical charge or current intended to temporarily or permanently disable a person.

u. "Ballistic knife" means any weapon or other device capable of lethal use and which can propel a knife blade.

v. "Imitation firearm" means an object or device reasonably capable of being mistaken for a firearm.

w. "Assault firearm" means:

(1) The following firearms:

Algimec AGM1 type

Any shotgun with a revolving cylinder such as the "Street Sweeper" or "Striker 12"

Armalite AR-180 type

Australian Automatic Arms SAR

Avtomat Kalashnikov type semi-automatic firearms

Beretta AR-70 and BM59 semi-automatic firearms

Bushmaster Assault Rifle

Calico M-900 Assault carbine and M-900

CETME G3

Chartered Industries of Singapore SR-88 type

Colt AR-15 and CAR-15 series

Daewoo K-1, K-2, Max 1 and Max 2, AR 100 types

Demro TAC-1 carbine type

Encom MP-9 and MP-45 carbine types

FAMAS MAS223 types

FN-FAL, FN-LAR, or FN-FNC type semi-automatic firearms

Franchi SPAS 12 and LAW 12 shotguns

G3SA type

Galil type Heckler and Koch HK91, HK93, HK94, MP5, PSG-1

Intratec TEC 9 and 22 semi-automatic firearms

M1 carbine type

M14S type

MAC 10, MAC 11, MAC 11-9mm carbine type firearms

PJK M-68 carbine type

Plainfield Machine Company Carbine

Ruger K-Mini-14/5F and Mini-14/5RF

SIG AMT, SIG 550SP, SIG 551SP, SIG PE-57 types

SKS with detachable magazine type

Spectre Auto carbine type

Springfield Armory BM59 and SAR-48 type

Sterling MK-6, MK-7 and SAR types

Steyr A.U.G. semi-automatic firearms

USAS 12 semi-automatic type shotgun

Uzi type semi-automatic firearms

Valmet M62, M71S, M76, or M78 type semi-automatic firearms

Weaver Arm Nighthawk.

(2) Any firearm manufactured under any designation which is substantially identical to any of the firearms listed above.

(3) A semi-automatic shotgun with either a magazine capacity exceeding six rounds, a pistol grip, or a folding stock.

(4) A semi-automatic rifle with a fixed magazine capacity exceeding 10 rounds. "Assault firearm" shall not include a semi-automatic rifle which has an attached tubular device and which is capable of operating only with .22 caliber rimfire ammunition.

(5) A part or combination of parts designed or intended to convert a firearm into an assault firearm, or any combination of parts from which an assault firearm may be readily assembled if those parts are in the possession or under the control of the same person.

(6) A firearm with a bump stock attached.

x. "Semi-automatic" means a firearm which fires a single projectile for each single pull of the trigger and is self-reloading or automatically chambers a round, cartridge, or bullet.

y. "Large capacity ammunition magazine" means a box, drum, tube or other container which is capable of holding more than 10 rounds of ammunition to be fed continuously and directly therefrom into a semi-automatic firearm. The term shall not include an attached tubular device which is capable of holding only .22 caliber rimfire ammunition.

z. "Pistol grip" means a well-defined handle, similar to that found on a handgun, that protrudes conspicuously beneath the action of the weapon, and which permits the shotgun to be held and fired with one hand.

aa. "Antique handgun" means a handgun manufactured before 1898, or a replica thereof, which is recognized as being historical in nature or of historical significance and either (1) utilizes a match, friction, flint, or percussion ignition, or which utilizes a pin-fire cartridge in which the pin is part of the cartridge or (2) does not fire fixed ammunition or for which cartridge ammunition is not commercially available.

bb. "Trigger lock" means a commercially available device approved by the Superintendent of State Police which is operated with a key or combination lock that prevents a firearm from being discharged while the device is attached to

the firearm. It may include, but need not be limited to, devices that obstruct the barrel or cylinder of the firearm, as well as devices that immobilize the trigger.

cc. “Trigger locking device” means a device that, if installed on a firearm and secured by means of a key or mechanically, electronically or electromechanically operated combination lock, prevents the firearm from being discharged without first deactivating or removing the device by means of a key or mechanically, electronically or electromechanically operated combination lock.

dd. “Personalized handgun” means a handgun which incorporates within its design, and as part of its original manufacture, technology which automatically limits its operational use and which cannot be readily deactivated, so that it may only be fired by an authorized or recognized user. The technology limiting the handgun's operational use may include, but not be limited to: radio frequency tagging, touch memory, remote control, fingerprint, magnetic encoding and other automatic user identification systems utilizing biometric, mechanical or electronic systems. No make or model of a handgun shall be deemed to be a “personalized handgun” unless the Attorney General has determined, through testing or other reasonable means, that the handgun meets any reliability standards that the manufacturer may require for its commercially available handguns that are not personalized or, if the manufacturer has no such reliability standards, the handgun meets the reliability standards generally used in the industry for commercially available handguns.

ee. “Bump stock” means any device or instrument for a firearm that increases the rate of fire achievable with the firearm by using energy from the recoil of the firearm to generate a reciprocating action that facilitates repeated activation of the trigger.

ff. “Trigger crank” means any device or instrument to be attached to a firearm that repeatedly activates the trigger of the firearm through the use of a lever or other part that is turned in a circular motion; provided, however, the term shall not include any weapon initially designed and manufactured to fire through the use of a crank or lever.

gg. “Armor piercing ammunition” means: (1) a projectile or projectile core which may be used in a handgun and is constructed entirely, excluding the presence of traces of other substances, from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or (2) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile. “Armor piercing ammunition” shall not include shotgun shot required by federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the United States Attorney General finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the United States Attorney General finds is intended to be used for industrial purposes, including a charge used in an oil gas well perforating device.

#### Credits

L.1978, c. 95, § 2C:39-1, eff. Sept. 1, 1979. Amended by L.1981, c. 363, § 1, eff. Dec. 30, 1981; L.1983, c. 479, § 1, eff. Jan. 12, 1984; L.1985, c. 360, § 1, eff. Nov. 12, 1985; L.1987, c. 228, § 1, eff. July 30, 1987; [L.1989, c. 120, § 1, eff. Aug. 1, 1989](#); [L.1990, c. 32, § 1, eff. May 30, 1990](#); [L.1999, c. 233, § 1, eff. Jan. 1, 2000](#); [L.1999, c. 255, § 1, eff. Oct. 15, 1999](#); [L.2002, c. 130, § 5, eff. Dec. 23, 2002](#); [L.2017, c. 323, § 1, eff. Jan. 16, 2018](#); [L.2018, c. 38, § 1, eff. June 13, 2018](#); [L.2018, c. 39, § 1, eff. June 13, 2018](#).

N. J. S. A. 2C:39-1, NJ ST 2C:39-1

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New Jersey Statutes Annotated

Title 2c. The New Jersey Code of Criminal Justice (Refs & Annos)

Subtitle 2. Definition of Specific Offenses

Part 5. Offenses Against Public Order, Health and Decency

Chapter 39. Firearms, Other Dangerous Weapons and Instruments of Crime (Refs & Annos)

N.J.S.A. 2C:39-3

2C:39-3. Prohibited weapons and devices

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[Currentness](#)

Prohibited Weapons and Devices.

- a. Destructive devices. Any person who knowingly has in his possession any destructive device is guilty of a crime of the third degree.
- b. Sawed-off shotguns. Any person who knowingly has in his possession any sawed-off shotgun is guilty of a crime of the third degree.
- c. Silencers. Any person who knowingly has in his possession any firearm silencer is guilty of a crime of the fourth degree.
- d. Defaced firearms. Any person who knowingly has in his possession any firearm which has been defaced, except an antique firearm or an antique handgun, is guilty of a crime of the fourth degree.
- e. Certain weapons. Any person who knowingly has in his possession any gravity knife, switchblade knife, dagger, dirk, stiletto, billy, blackjack, metal knuckle, sandclub, slingshot, cestus or similar leather band studded with metal filings or razor blades imbedded in wood, ballistic knife, without any explainable lawful purpose, is guilty of a crime of the fourth degree.
- f. Dum-dum or armor piercing ammunition. (1) Any person, other than a law enforcement officer or persons engaged in activities pursuant to subsection f. of [N.J.S.2C:39-6](#), who knowingly has in his possession any hollow nose or dum-dum bullet, or (2) any person, other than a collector of firearms or ammunition as curios or relics as defined in [Title 18, United States Code, section 921 \(a\) \(13\)](#) and has in his possession a valid Collector of Curios and Relics License issued by the Bureau of Alcohol, Tobacco , Firearms, and Explosives, who knowingly has in his possession any armor piercing ammunition as defined in subsection gg. of [N.J.S.2C:39-1](#) is guilty of a crime of the fourth degree. For purposes of this section, a collector may possess not more than three examples of each distinctive variation of the ammunition described above. A distinctive variation includes a different head stamp, composition, design, or color.
- g. Exceptions. (1) Nothing in subsection a., b., c., d., e., f., j. or k. of this section shall apply to any member of the Armed Forces of the United States or the National Guard, or except as otherwise provided, to any law enforcement officer

while actually on duty or traveling to or from an authorized place of duty, provided that his possession of the prohibited weapon or device has been duly authorized under the applicable laws, regulations or military or law enforcement orders.

Nothing in subsection h. of this section shall apply to any law enforcement officer who is exempted from the provisions of that subsection by the Attorney General. Nothing in this section shall apply to the possession of any weapon or device by a law enforcement officer who has confiscated, seized or otherwise taken possession of said weapon or device as evidence of the commission of a crime or because he believed it to be possessed illegally by the person from whom it was taken, provided that said law enforcement officer promptly notifies his superiors of his possession of such prohibited weapon or device.

(2) a. Nothing in subsection f. (1) shall be construed to prevent a person from keeping such ammunition at his dwelling, premises or other land owned or possessed by him, or from carrying such ammunition from the place of purchase to said dwelling or land, nor shall subsection f. (1) be construed to prevent any licensed retail or wholesale firearms dealer from possessing such ammunition at its licensed premises, provided that the seller of any such ammunition shall maintain a record of the name, age and place of residence of any purchaser who is not a licensed dealer, together with the date of sale and quantity of ammunition sold.

b. Nothing in subsection f.(1) shall be construed to prevent a designated employee or designated licensed agent for a nuclear power plant under the license of the Nuclear Regulatory Commission from possessing hollow nose ammunition while in the actual performance of his official duties, if the federal licensee certifies that the designated employee or designated licensed agent is assigned to perform site protection, guard, armed response or armed escort duties and is appropriately trained and qualified, as prescribed by federal regulation, to perform those duties.

(3) Nothing in paragraph (2) of subsection f. or in subsection j. shall be construed to prevent any licensed retail or wholesale firearms dealer from possessing that ammunition or large capacity ammunition magazine at its licensed premises for sale or disposition to another licensed dealer, the Armed Forces of the United States or the National Guard, or to a law enforcement agency, provided that the seller maintains a record of any sale or disposition to a law enforcement agency. The record shall include the name of the purchasing agency, together with written authorization of the chief of police or highest ranking official of the agency, the name and rank of the purchasing law enforcement officer, if applicable, and the date, time and amount of ammunition sold or otherwise disposed. A copy of this record shall be forwarded by the seller to the Superintendent of the Division of State Police within 48 hours of the sale or disposition.

(4) Nothing in subsection a. of this section shall be construed to apply to antique cannons as exempted in subsection d. of [N.J.S.2C:39-6](#).

(5) Nothing in subsection c. of this section shall be construed to apply to any person who is specifically identified in a special deer management permit issued by the Division of Fish and Wildlife to utilize a firearm silencer as part of an alternative deer control method implemented in accordance with a special deer management permit issued pursuant to section 4 of [P.L.2000, c. 46 \(C.23:4-42.6\)](#), while the person is in the actual performance of the permitted alternative deer control method and while going to and from the place where the permitted alternative deer control method is being utilized. This exception shall not, however, otherwise apply to any person to authorize the purchase or possession of a firearm silencer.

h. Stun guns. Any person who knowingly has in his possession any stun gun is guilty of a crime of the fourth degree.

i. Nothing in subsection e. of this section shall be construed to prevent any guard in the employ of a private security company, who is licensed to carry a firearm, from the possession of a nightstick when in the actual performance of his official duties, provided that he has satisfactorily completed a training course approved by the Police Training Commission in the use of a nightstick.

j. Any person who knowingly has in his possession a large capacity ammunition magazine is guilty of a crime of the fourth degree unless the person has registered:

(1) an assault firearm pursuant to section 11 of [P.L.1990, c. 32 \(C.2C:58-12\)](#) and the magazine is maintained and used in connection with participation in competitive shooting matches sanctioned by the Director of Civilian Marksmanship of the United States Department of the Army ; or

(2) a firearm with a fixed magazine capacity or detachable magazine capable of holding up to 15 rounds pursuant to section 7 of [P.L.2018, c. 39 \(C.2C:39-20\)](#).

k. Handcuffs. Any person who knowingly has in his possession handcuffs as defined in [P.L.1991, c. 437 \(C.2C:39-9.2\)](#), under circumstances not manifestly appropriate for such lawful uses as handcuffs may have, is guilty of a disorderly persons offense. A law enforcement officer shall confiscate handcuffs possessed in violation of the law.

l. Bump stock or trigger crank. Any person who knowingly possesses a bump stock as defined in subsection ee. of [N.J.S.2C:39-1](#) or a trigger crank as defined in subsection ff. of [N.J.S.2C:39-1](#), regardless of whether the person is in possession of a firearm, is guilty of a crime of the third degree.

Notwithstanding the provisions of [N.J.S.2C:1-8](#) or any other provision of law, a conviction arising out of this subsection shall not merge with a conviction for possessing an assault firearm in violation of subsection f. of [N.J.S.2C:39-5](#) or a machine gun in violation of subsection a. of [N.J.S.2C:39-5](#) and a separate sentence shall be imposed upon each conviction. Notwithstanding the provisions of [N.J.S.2C:44-5](#) or any other provisions of law, the sentence imposed pursuant to this subsection shall be served consecutively to that imposed for unlawfully possessing an assault firearm in violation of subsection f. of [N.J.S.2C:39-5](#).

#### Credits

L.1978, c. 95, § 2C:39-3, eff. Sept. 1, 1979. Amended by L.1979, c. 179, § 2, eff. Sept. 1, 1979; L.1983, c. 58, § 1, eff. Feb. 7, 1983; L.1983, c. 479, § 2, eff. Jan. 12, 1984; L.1985, c. 360, § 2, eff. Nov. 12, 1985; L.1987, c. 228, § 2, eff. July 30, 1987; L.1989, c. 11, § 1, eff. Feb. 1, 1989; L.1990, c. 32, § 10, eff. May 30, 1990; L.1991, c. 437, § 1, eff. Jan. 18, 1992; L.1999, c. 233, § 2, eff. Jan. 1, 2000; L.2000, c. 46, § 5, eff. June 30, 2000; L.2003, c. 168, § 1, eff. Sept. 3, 2003; L.2017, c. 323, § 2, eff. Jan. 16, 2018; L.2018, c. 38, § 2, eff. June 13, 2018; L.2018, c. 39, § 2, eff. June 13, 2018.

N. J. S. A. 2C:39-3, NJ ST 2C:39-3

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New Jersey Statutes Annotated

Title 2c. The New Jersey Code of Criminal Justice (Refs & Annos)

Subtitle 2. Definition of Specific Offenses

Part 5. Offenses Against Public Order, Health and Decency

Chapter 39. Firearms, Other Dangerous Weapons and Instruments of Crime (Refs & Annos)

N.J.S.A. 2C:39-9

2C:39-9. Manufacture, transport, disposition and defacement  
of weapons and dangerous instruments and appliances

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[Currentness](#)

Manufacture, Transport, Disposition and Defacement of Weapons and Dangerous Instruments and Appliances. a. Machine guns. Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of any machine gun without being registered or licensed to do so as provided in chapter 58 is guilty of a crime of the third degree.

b. Sawed-off shotguns. Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of any sawed-off shotgun is guilty of a crime of the third degree.

c. Firearm silencers. Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of any firearm silencer is guilty of a crime of the fourth degree.

d. Weapons. Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of any weapon, including gravity knives, switchblade knives, ballistic knives, daggers, dirks, stilettos, billies, blackjacks, metal knuckles, sandclubs, slingshots, cesti or similar leather bands studded with metal filings, or, except as otherwise provided in subsection i. of this section, in the case of firearms if he is not licensed or registered to do so as provided in chapter 58, is guilty of a crime of the fourth degree. Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of any weapon or other device which projects, releases or emits tear gas or other substances intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air, which is intended to be used for any purpose other than for authorized military or law enforcement purposes by duly authorized military or law enforcement personnel or the device is for the purpose of personal self-defense, is pocket-sized and contains not more than three-quarters of an ounce of chemical substance not ordinarily capable of lethal use or of inflicting serious bodily injury, or other than to be used by any person permitted to possess such weapon or device under the provisions of subsection d. of [N.J.S.2C:39-5](#), which is intended for use by financial and other business institutions as part of an integrated security system, placed at fixed locations, for the protection of money and property, by the duly authorized personnel of those institutions, is guilty of a crime of the fourth degree.

e. Defaced firearms. Any person who defaces any firearm is guilty of a crime of the third degree. Any person who knowingly buys, receives, disposes of or conceals a defaced firearm, except an antique firearm or an antique handgun, is guilty of a crime of the fourth degree.

f. (1) Any person who manufactures, causes to be manufactured, transports, ships, sells, or disposes of any armor piercing ammunition as defined in subsection gg. of [N.J.S.2C:39-1](#) which is intended to be used for any purpose other than for authorized military or law enforcement purposes by duly authorized military or law enforcement personnel, is guilty of a crime of the fourth degree.

(2) Nothing in this subsection shall be construed to prevent a licensed collector of ammunition as defined in paragraph (2) of subsection f. of [N.J.S.2C:39-3](#) from transporting the bullets defined in paragraph (1) of this subsection from (a) any licensed retail or wholesale firearms dealer's place of business to the collector's dwelling, premises, or other land owned or possessed by him, or (b) to or from the collector's dwelling, premises or other land owned or possessed by him to any gun show for the purposes of display, sale, trade, or transfer between collectors, or (c) to or from the collector's dwelling, premises or other land owned or possessed by him to any rifle or pistol club organized in accordance with the rules prescribed by the National Board for the Promotion of Rifle Practice; provided that the club has filed a copy of its charter with the superintendent of the State Police and annually submits a list of its members to the superintendent, and provided further that the ammunition being transported shall be carried not loaded in any firearm and contained in a closed and fastened case, gun box, or locked in the trunk of the automobile in which it is being transported, and the course of travel shall include only such deviations as are reasonably necessary under the circumstances.

g. Assault firearms. Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of an assault firearm without being registered or licensed to do so pursuant to [N.J.S.2C:58-1 et seq.](#) is guilty of a crime of the third degree.

h. Large capacity ammunition magazines. Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of a large capacity ammunition magazine which is intended to be used for any purpose other than for authorized military or law enforcement purposes by duly authorized military or law enforcement personnel is guilty of a crime of the fourth degree.

i. Transporting firearms into this State for an unlawful sale or transfer. Any person who knowingly transports, ships or otherwise brings into this State any firearm for the purpose of unlawfully selling, transferring, giving, assigning or otherwise disposing of that firearm to another individual is guilty of a crime of the second degree. Any motor vehicle used by a person to transport, ship, or otherwise bring a firearm into this State for unlawful sale or transfer shall be subject to forfeiture in accordance with the provisions of [N.J.S.2C:64-1 et seq.](#); provided however, this forfeiture provision shall not apply to innocent owners, nor shall it affect the rights of a holder of a valid lien.

The temporary transfer of a firearm shall not constitute a violation of this subsection if that firearm is transferred:

(1) while hunting or target shooting in accordance with the provisions of section 1 of [P.L.1992, c. 74 \(C.2C:58-3.1\)](#);

(2) for shooting competitions sponsored by a licensed dealer, law enforcement agency, legally recognized military organization, or a rifle or pistol club which has filed a copy of its charter with the superintendent in accordance with the provisions of section 1 of [P.L.1992, c. 74 \(C.2C:58-3.1\)](#); or

(3) for participation in a training course conducted by a certified instructor in accordance with the provisions of section 1 of [P.L.1997, c. 375 \(C.2C:58-3.2\)](#).

The transfer of any firearm that uses air or carbon dioxide to expel a projectile; or the transfer of an antique firearm shall not constitute a violation of this subsection.

j. Any person who manufactures, causes to be manufactured, transports, ships, sells, or disposes of a bump stock as defined in subsection ee. of [N.J.S.2C:39-1](#) or a trigger crank as defined in subsection ff. of [N.J.S.2C:39-1](#) is guilty of a crime of the third degree.

#### Credits

L.1978, c. 95, § 2C:39-9, eff. Sept. 1, 1979. Amended by L.1979, c. 179, § 7, eff. Sept. 1, 1979; L.1980, c. 108, § 1, eff. Sept. 11, 1980; L.1981, c. 480, § 2, eff. Jan. 12, 1982; L.1983, c. 58, § 2, eff. Feb. 7, 1983; L.1987, c. 228, § 3, eff. July 30, 1987; [L.1990, c. 32, § 3, eff. May 30, 1990](#); [L.1999, c. 233, § 3, eff. Jan. 1, 2000](#); [L.2007, c. 298, § 1, eff. April 1, 2008](#); [L.2013, c. 111, § 1, eff. Nov. 1, 2013](#); [L.2017, c. 323, § 3, eff. Jan. 16, 2018](#); [L.2018, c. 38, § 3, eff. June 13, 2018](#).

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McKinney's Consolidated Laws of New York Annotated  
Penal Law (Refs & Annos)  
Chapter 40. Of the Consolidated Laws (Refs & Annos)  
Part Three. Specific Offenses  
Title P. Offenses Against Public Safety  
Article 265. Firearms and Other Dangerous Weapons (Refs & Annos)

McKinney's Penal Law § 265.00

§ 265.00 Definitions

Effective: June 11, 2018

[Currentness](#)

As used in this article and in article four hundred, the following terms shall mean and include:

1. “Machine-gun” means a weapon of any description, irrespective of size, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger and includes a sub-machine gun.
2. “Firearm silencer” means any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearms to be silent, or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearms.
3. “Firearm” means (a) any pistol or revolver; or (b) a shotgun having one or more barrels less than eighteen inches in length; or (c) a rifle having one or more barrels less than sixteen inches in length; or (d) any weapon made from a shotgun or rifle whether by alteration, modification, or otherwise if such weapon as altered, modified, or otherwise has an overall length of less than twenty-six inches; or (e) an assault weapon. For the purpose of this subdivision the length of the barrel on a shotgun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech, or breechlock when closed and when the shotgun or rifle is cocked; the overall length of a weapon made from a shotgun or rifle is the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore. Firearm does not include an antique firearm.
4. “Switchblade knife” means any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.
5. “Gravity knife” means any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device.
- 5-a. “Pilum ballistic knife” means any knife which has a blade which can be projected from the handle by hand pressure applied to a button, lever, spring or other device in the handle of the knife.



(v) any weapon validly registered pursuant to [subdivision sixteen-a of section 400.00](#) of this chapter. Such weapons shall be subject to the provisions of paragraph (h) of this subdivision;

(vi) any firearm, rifle, or shotgun that was manufactured at least fifty years prior to the current date, but not including replicas thereof that is validly registered pursuant to [subdivision sixteen-a of section 400.00](#) of this chapter;

(h) Any weapon defined in paragraph (e) or (f) of this subdivision and any large capacity ammunition feeding device that was legally possessed by an individual prior to the enactment of the chapter of the laws of two thousand thirteen which added this paragraph, may only be sold to, exchanged with or disposed of to a purchaser authorized to possess such weapons or to an individual or entity outside of the state provided that any such transfer to an individual or entity outside of the state must be reported to the entity wherein the weapon is registered within seventy-two hours of such transfer. An individual who transfers any such weapon or large capacity ammunition device to an individual inside New York state or without complying with the provisions of this paragraph shall be guilty of a class A misdemeanor unless such large capacity ammunition feeding device, the possession of which is made illegal by the chapter of the laws of two thousand thirteen which added this paragraph, is transferred within one year of the effective date of the chapter of the laws of two thousand thirteen which added this paragraph.

23. “Large capacity ammunition feeding device” means a magazine, belt, drum, feed strip, or similar device, that (a) has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition, or (b) [Suspended and not effective, pursuant to [L.2013, c. 57, pt. FF, § 4, eff. March 29, 2013, deemed eff. Jan. 15, 2013.](#)] contains more than seven rounds of ammunition, or (c) [Suspended and not effective, pursuant to [L.2013, c. 57, pt. FF, § 4, eff. March 29, 2013, deemed eff. Jan. 15, 2013.](#)] is obtained after the effective date of the chapter of the laws of two thousand thirteen which amended this subdivision and has a capacity of, or that can be readily restored or converted to accept, more than seven rounds of ammunition; provided, however, that such term does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition or a feeding device that is a curio or relic. A feeding device that is a curio or relic is defined as a device that (i) was manufactured at least fifty years prior to the current date, (ii) is only capable of being used exclusively in a firearm, rifle, or shotgun that was manufactured at least fifty years prior to the current date, but not including replicas thereof, (iii) is possessed by an individual who is not prohibited by state or federal law from possessing a firearm and (iv) is registered with the division of state police pursuant to [subdivision sixteen-a of section 400.00](#) of this chapter, except such feeding devices transferred into the state may be registered at any time, provided they are registered within thirty days of their transfer into the state. Notwithstanding paragraph (h) of subdivision twenty-two of this section, such feeding devices may be transferred provided that such transfer shall be subject to the provisions of [section 400.03](#) of this chapter including the check required to be conducted pursuant to such section.

24. “Seller of ammunition” means any person, firm, partnership, corporation or company who engages in the business of purchasing, selling or keeping ammunition.

25. “Qualified retired New York or federal law enforcement officer” means an individual who is a retired police officer as police officer is defined in [subdivision thirty-four of section 1.20 of the criminal procedure law](#), a retired peace officer as peace officer is defined in [section 2.10 of the criminal procedure law](#) or a retired federal law enforcement officer as federal law enforcement officer is defined in [section 2.15 of the criminal procedure law](#), who: (a) separated from service in good standing from a public agency located in New York state in which such person served as either a police officer, peace officer or federal law enforcement officer; and (b) before such separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation



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McKinney's Penal Law § 265.02

§ 265.02 Criminal possession of a weapon in the third degree

Effective: March 16, 2013

[Currentness](#)

A person is guilty of criminal possession of a weapon in the third degree when:

- (1) Such person commits the crime of criminal possession of a weapon in the fourth degree as defined in [subdivision one, two, three or five of section 265.01](#), and has been previously convicted of any crime; or
- (2) Such person possesses any explosive or incendiary bomb, bombshell, firearm silencer, machine-gun or any other firearm or weapon simulating a machine-gun and which is adaptable for such use; or
- (3) Such person knowingly possesses a machine-gun, firearm, rifle or shotgun which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun, firearm, rifle or shotgun; or
- (4) *Repealed by L.2006, c. 742, § 1, eff. Nov. 1, 2006.*
- (5) (i) Such person possesses three or more firearms; or (ii) such person possesses a firearm and has been previously convicted of a felony or a class A misdemeanor defined in this chapter within the five years immediately preceding the commission of the offense and such possession did not take place in the person's home or place of business; or
- (6) Such person knowingly possesses any disguised gun; or
- (7) Such person possesses an assault weapon; or
- (8) Such person possesses a large capacity ammunition feeding device. For purposes of this subdivision, a large capacity ammunition feeding device shall not include an ammunition feeding device lawfully possessed by such person before the effective date of the chapter of the laws of two thousand thirteen which amended this subdivision, that has a capacity of, or that can be readily restored or converted to accept more than seven but less than eleven rounds of ammunition, or that was manufactured before September thirteenth, nineteen hundred ninety-four, that has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition; or

(9) Such person possesses an unloaded firearm and also commits a drug trafficking felony as defined in [subdivision twenty-one of section 10.00](#) of this chapter as part of the same criminal transaction; or

(10) Such person possesses an unloaded firearm and also commits any violent felony offense as defined in [subdivision one of section 70.02](#) of this chapter as part of the same criminal transaction.

Criminal possession of a weapon in the third degree is a class D felony.

#### Credits

(Added L.1974, c. 1041, § 3. Amended L.1980, c. 233, § 7; L.1981, c. 175, § 4; [L.1987, c. 695, § 1](#); [L.1998, c. 378, § 3](#), eff. Nov. 1, 1998; [L.2000, c. 189, § 11](#), eff. Nov. 1, 2000; [L.2005, c. 764, § 2](#), eff. Dec. 21, 2005; [L.2006, c. 742, § 1](#), eff. Nov. 1, 2006; [L.2013, c. 1, § 41-b](#), eff. March 16, 2013.)

McKinney's Penal Law § 265.02, NY PENAL § 265.02

Current through L.2018, chapters 1 to 321.

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McKinney's Penal Law § 265.10

§ 265.10 Manufacture, transport, disposition and defacement  
of weapons and dangerous instruments and appliances

Effective: November 1, 2008

[Currentness](#)

1. Any person who manufactures or causes to be manufactured any machine-gun, assault weapon, large capacity ammunition feeding device or disguised gun is guilty of a class D felony. Any person who manufactures or causes to be manufactured any switchblade knife, gravity knife, pilum ballistic knife, metal knuckle knife, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, Kung Fu star, chuka stick, sandbag, sandclub or slungshot is guilty of a class A misdemeanor.
2. Any person who transports or ships any machine-gun, firearm silencer, assault weapon or large capacity ammunition feeding device or disguised gun, or who transports or ships as merchandise five or more firearms, is guilty of a class D felony. Any person who transports or ships as merchandise any firearm, other than an assault weapon, switchblade knife, gravity knife, pilum ballistic knife, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, Kung Fu star, chuka stick, sandbag or slungshot is guilty of a class A misdemeanor.
3. Any person who disposes of any machine-gun, assault weapon, large capacity ammunition feeding device or firearm silencer is guilty of a class D felony. Any person who knowingly buys, receives, disposes of, or conceals a machine-gun, firearm, large capacity ammunition feeding device, rifle or shotgun which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun, firearm, large capacity ammunition feeding device, rifle or shotgun is guilty of a class D felony.
4. Any person who disposes of any of the weapons, instruments or appliances specified in [subdivision one of section 265.01](#), except a firearm, is guilty of a class A misdemeanor, and he is guilty of a class D felony if he has previously been convicted of any crime.
5. Any person who disposes of any of the weapons, instruments, appliances or substances specified in [section 265.05](#) to any other person under the age of sixteen years is guilty of a class A misdemeanor.
6. Any person who wilfully defaces any machine-gun, large capacity ammunition feeding device or firearm is guilty of a class D felony.

7. Any person, other than a wholesale dealer, or gunsmith or dealer in firearms duly licensed pursuant to [section 400.00](#), lawfully in possession of a firearm, who disposes of the same without first notifying in writing the licensing officer in the city of New York and counties of Nassau and Suffolk and elsewhere in the state the executive department, division of state police, Albany, is guilty of a class A misdemeanor.

**Credits**

(L.1965, c. 1030. Amended L.1974, c. 179, § 3; L.1974, c. 1041, § 4; L.1978, c. 3, § 1; L.1980, c. 233, § 10; L.1985, c. 61, § 3; L.1986, c. 328, § 4; [L.1987, c. 695, § 2](#); [L.1991, c. 174, § 1](#); [L.1995, c. 219, § 4](#); [L.1998, c. 378, § 5, eff. Nov. 1, 1998](#); [L.2000, c. 189, § 12, eff. Nov. 1, 2000](#); [L.2008, c. 257, § 5, eff. Nov. 1, 2008](#).)

McKinney's Penal Law § 265.10, NY PENAL § 265.10

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McKinney's Penal Law § 265.11

§ 265.11 Criminal sale of a firearm in the third degree

Effective: December 21, 2005

[Currentness](#)

A person is guilty of criminal sale of a firearm in the third degree when such person is not authorized pursuant to law to possess a firearm and such person unlawfully either:

- (1) sells, exchanges, gives or disposes of a firearm or large capacity ammunition feeding device to another person; or
- (2) possesses a firearm with the intent to sell it.

Criminal sale of a firearm in the third degree is a class D felony.

**Credits**

(Added L.1980, c. 233, § 11. Amended [L.1991, c. 496, § 1](#); [L.1995, c. 310, § 1](#); [L.1998, c. 654, § 1, eff. Nov. 1, 1999](#); [L.2000, c. 189, § 13, eff. Nov. 1, 2000](#); [L.2005, c. 764, § 5, eff. Dec. 21, 2005](#).)

McKinney's Penal Law § 265.11, NY PENAL § 265.11

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McKinney's Penal Law § 265.20

§ 265.20 Exemptions

Effective: December 17, 2014

[Currentness](#)

a. Paragraph (h) of [subdivision twenty-two of section 265.00](#) and [sections 265.01, 265.01-a, subdivision one of section 265.01-b, 265.02, 265.03, 265.04, 265.05, 265.10, 265.11, 265.12, 265.13, 265.15, 265.36, 265.37 and 270.05](#) shall not apply to:

1. Possession of any of the weapons, instruments, appliances or substances specified in [sections 265.01, 265.02, 265.03, 265.04, 265.05 and 270.05](#) by the following:

(a) Persons in the military service of the state of New York when duly authorized by regulations issued by the adjutant general to possess the same.

(b) Police officers as defined in [subdivision thirty-four of section 1.20 of the criminal procedure law](#).

(c) Peace officers as defined by [section 2.10 of the criminal procedure law](#).

(d) Persons in the military or other service of the United States, in pursuit of official duty or when duly authorized by federal law, regulation or order to possess the same.

(e) Persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of the same is necessary for manufacture, transport, installation and testing under the requirements of such contract.

(f) A person voluntarily surrendering such weapon, instrument, appliance or substance, provided that such surrender shall be made to the superintendent of the division of state police or a member thereof designated by such superintendent, or to the sheriff of the county in which such person resides, or in the county of Nassau or in the towns of Babylon, Brookhaven, Huntington, Islip and Smithtown in the county of Suffolk to the commissioner of police or a member of the police department thereof designated by such commissioner, or if such person resides in a city, town other than one named in this subparagraph, or village to the police commissioner or head of the police force or department thereof or to a member of the force or department designated by such commissioner or head; and provided, further, that the same shall be surrendered by such person in accordance with such terms and conditions as may be established by such

hunting, including safety, ethics, and landowner relations-hunter relations, issued or honored by the department of environmental conservation.

7-e. Possession and use of a pistol or revolver, at an indoor or outdoor pistol range located in or on premises owned or occupied by a duly incorporated organization organized for conservation purposes or to foster proficiency in small arms or at a target pistol shooting competition under the auspices of or approved by an association or organization described in paragraph 7-a of this subdivision for the purpose of loading and firing the same by a person at least fourteen years of age but under the age of twenty-one who has not been previously convicted of a felony or serious offense, and who does not appear to be, or pose a threat to be, a danger to himself or to others; provided however, that such possession shall be of a pistol or revolver duly licensed to and shall be used under the immediate supervision, guidance and instruction of, a person specified in paragraph seven of this subdivision.

7-f. Possession and use of a magazine, belt, feed strip or similar device, that contains more than seven rounds of ammunition, but that does not have a capacity of or can readily be restored or converted to accept more than ten rounds of ammunition, at an indoor or outdoor firing range located in or on premises owned or occupied by a duly incorporated organization organized for conservation purposes or to foster proficiency in arms; at an indoor or outdoor firing range for the purpose of firing a rifle or shotgun; at a collegiate, olympic or target shooting competition under the auspices of or approved by the national rifle association; or at an organized match sanctioned by the International Handgun Metallic Silhouette Association.

8. The manufacturer of machine-guns, firearm silencers, assault weapons, large capacity ammunition feeding devices, disguised guns, pilum ballistic knives, switchblade or gravity knives, billies or blackjacks as merchandise, or as a transferee recipient of the same for repair, lawful distribution or research and development, and the disposal and shipment thereof direct to a regularly constituted or appointed state or municipal police department, sheriff, policeman or other peace officer, or to a state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, or to the military service of this state or of the United States; or for the repair and return of the same to the lawful possessor or for research and development.

9. The regular and ordinary transport of firearms as merchandise, provided that the person transporting such firearms, where he knows or has reasonable means of ascertaining what he is transporting, notifies in writing the police commissioner, police chief or other law enforcement officer performing such functions at the place of delivery, of the name and address of the consignee and the place of delivery, and withholds delivery to the consignee for such reasonable period of time designated in writing by such police commissioner, police chief or other law enforcement officer as such official may deem necessary for investigation as to whether the consignee may lawfully receive and possess such firearms.

9-a. a. Except as provided in subdivision b hereof, the regular and ordinary transport of pistols or revolvers by a manufacturer of firearms to whom a license as a dealer in firearms has been issued pursuant to [section 400.00](#) of this chapter, or by an agent or employee of such manufacturer of firearms who is otherwise duly licensed to carry a pistol or revolver and who is duly authorized in writing by such manufacturer of firearms to transport pistols or revolvers on the date or dates specified, directly between places where the manufacturer of firearms regularly conducts business provided such pistols or revolvers are transported unloaded, in a locked opaque container. For purposes of this subdivision, places where the manufacturer of firearms regularly conducts business includes, but is not limited to places where the manufacturer of firearms regularly or customarily conducts development or design of pistols or revolvers, or regularly or customarily conducts tests on pistols or revolvers, or regularly or customarily participates in the exposition of firearms to the public.

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McKinney's Penal Law § 265.36

§ 265.36 Unlawful possession of a large capacity ammunition feeding device

Effective: March 16, 2013

[Currentness](#)

It shall be unlawful for a person to knowingly possess a large capacity ammunition feeding device manufactured before September thirteenth, nineteen hundred ninety-four, and if such person lawfully possessed such large capacity feeding device before the effective date of the chapter of the laws of two thousand thirteen which added this section, that has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition.

An individual who has a reasonable belief that such device is of such a character that it may lawfully be possessed and who surrenders or lawfully disposes of such device within thirty days of being notified by law enforcement or county licensing officials that such possession is unlawful shall not be guilty of this offense. It shall be a rebuttable presumption that such person knows that such large capacity ammunition feeding device may not be lawfully possessed if he or she has been contacted by law enforcement or county licensing officials and informed that such device may not be lawfully possessed.

Unlawful possession of a large capacity ammunition feeding device is a class A misdemeanor.

**Credits**

(Added [L.2013, c. 1, § 46-a](#), eff. [March 16, 2013](#).)

McKinney's Penal Law § 265.36, NY PENAL § 265.36  
Current through L.2018, chapters 1 to 321.



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McKinney's Penal Law § 265.37

§ 265.37 Unlawful possession of certain ammunition feeding devices

Effective: March 29, 2013

[Currentness](#)

It shall be unlawful for a person to knowingly possess an ammunition feeding device where such device contains more than seven rounds of ammunition.

If such device containing more than seven rounds of ammunition is possessed within the home of the possessor, the person so possessing the device shall, for a first offense, be guilty of a violation and subject to a fine of two hundred dollars, and for each subsequent offense, be guilty of a class B misdemeanor and subject to a fine of two hundred dollars and a term of up to three months imprisonment.

If such device containing more than seven rounds of ammunition is possessed in any location other than the home of the possessor, the person so possessing the device shall, for a first offense, be guilty of a class B misdemeanor and subject to a fine of two hundred dollars and a term of up to six months imprisonment, and for each subsequent offense, be guilty of a class A misdemeanor.

**Credits**

(Added [L.2013, c. 1, § 46-a, eff. March 16, 2013](#). Amended [L.2013, c. 57, pt. FF, § 2, eff. March 29, 2013](#).)

McKinney's Penal Law § 265.37, NY PENAL § 265.37  
Current through L.2018, chapters 1 to 321.